

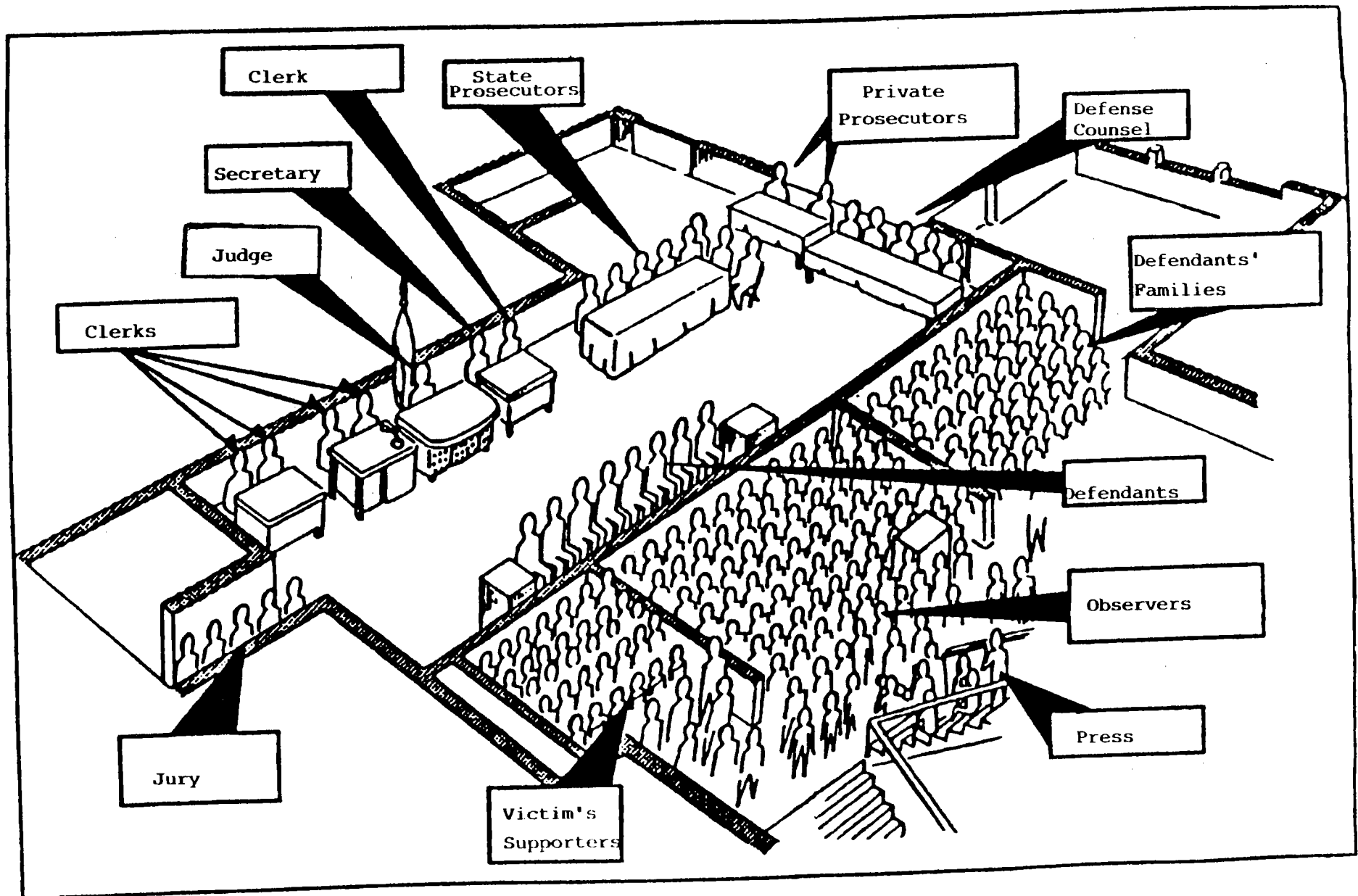
**REPORT OF THE SAN FRANCISCO
OBSERVER DELEGATION
TO THE
JESUIT MURDER TRIAL
IN EL SALVADOR**

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of San Francisco
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COURTROOM LAYOUT



I. INTRODUCTION

From September 26-28, Linda P. Drucker¹ and Naomi Roht-Arriaza² attended the trial of nine members of the Salvadoran armed forces as observers for the Bar Association of San Francisco ("BASF"). The BASF representatives were part of a larger delegation of observers sponsored by the New York-based Lawyers Committee for Human Rights.³ The observers witnessed what has been described as the most significant trial in Salvadoran history. A colonel, three lieutenants and five enlisted men were accused of assassinating six Jesuit priests, their housekeeper, and her 15-year-old daughter during a predawn raid on the campus of the Universidad Centroamericana (UCA) on November 16, 1989. The nine military men were each accused of eight counts of murder and one count of engaging in acts of terrorism, the three lieutenants and the colonel were accused of conspiracy, and all defendants except the colonel were accused of preparing to commit acts of terrorism.

After a three-day trial broadcast live on Salvadoran national television, an anonymous five person jury convicted colonel Guillermo Alfredo Benavides of eight counts of murder in El Salvador's first conviction ever of a colonel for engaging in human rights violations. One of the lieutenants was also convicted of one count of murder in connection with the slaying of the 15-year-old girl. The other seven defendants were completely exonerated. None of the nine was convicted of the terrorism-related charges.

We believe the results obtained in this case -- in the investigation, trial and jury verdict -- are far more modest than expected, and reflect serious shortcomings at every stage of the process. While the conviction of the colonel represents a positive development, the acquittals of the triggermen sends rank and file troops the troubling message that it is acceptable to commit human rights violations as long as they are acting under orders, even illegal ones. The mixed verdict in this case can only be understood within a broader context. The investigation of the murders was seriously flawed. The trial itself took place in a politically-charged climate, marked by intimidation of jurors, attorneys and the judge. Judicial procedures, no matter how well-defined, could not

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3/ Much of the background material in this report is based on reports issued by the Lawyers Committee from November 1989 to the present.

function well under such circumstances. The process showed the limits to judicial action in a single case, while hundreds of killings linked to the military have never been prosecuted at all.

The judicial process consisted of an investigatory phase in which evidence was produced under the direction of the judge. The judge then decided to allow the case to proceed to the adjudicative stage. This implied both that there was sufficient evidence to try the defendants and that introduction of any new evidence would be very difficult.

The evidence presented at trial consisted of the confessions of seven of the men while in police custody, ballistics tests linking the ammunition used by the assassins to guns registered to the Salvadoran military academy of which Col. Benavides was director, and the fact that the murders took place within a special security zone commanded by Col. Benavides which no one could have entered or exited without military authorization. On this evidence, the jury was apparently only partially persuaded of the defendants' guilt.

Three teams of attorneys were involved in the proceedings. One set of defense lawyers represented all nine defendants. A team of prosecutors from the government Attorney General's office advocated conviction of all nine men. A third set of lawyers represented the families of the victims. This so-called "private prosecution" was made up of two former state prosecutors, Henry Campos and Sidney Blanco, who had resigned from the Attorney General's office in protest on the grounds that the Salvadoran government was not pursuing the investigation with sufficient vigor.

II. THE INVESTIGATION

From the start, the investigation was marred by delays, stonewalling, and an official reluctance to pursue obvious leads. For the first month, the government tried to blame the killings on left-wing guerrillas of the Farabundo Marti Liberation Front ("FMLN"), despite the availability of clear evidence implicating the military. For example, a national radio station under military control had broadcast denunciations of the priests and threats against their lives on the night of the killings, and shortly after the murders military radio reported that one of the priests had been killed "resisting arrest," implying the involvement of military or police authorities. Despite this evidence, government authorities attempted to discredit the account of an eyewitness who reported seeing uniformed men on the campus on the night of the murders. She was forced to flee the country in fear of reprisals. During the critical interval in which military involvement was being denied, logbooks showing the movements of troops and vehicles on the night of the murders disappeared and were later revealed to have been burned at the direction of Col. Benavides' second-in-command. Only after the U.S. threatened to reveal information implicating the military did the Salvadoran authorities focus on army involvement.

Even then, the investigation was seriously deficient. The jury's failure to convict the majority of the accused officers may be attributable in whole or in part to these defects. They include:

1. Control of the Investigation by Military Authorities

The Special Investigative Unit ("SIU"), which ran the investigation during the crucial first two months, is ostensibly a civilian agency. However, the SIU is actually headed by a lieutenant colonel in the Salvadoran army, which at that time was Lt. Col. Manuel Antonio Rivas Mejia. The SIU's investigation was marred by a lack of competence, zeal, and good faith. For example, the SIU failed to take certain obvious steps, including questioning Col. Benavides, although he was commander of the military zone in which the murders took place and the area was subject to a military curfew. A U.S. military advisor's statement indicated that Col. Benavides may have already confessed his involvement in the killings to Col. Rivas and asked Col. Rivas for protection from prosecution. Nevertheless, Col. Rivas refused to give a statement under oath about whether or not Col. Benavides had confessed involvement in the crime. Col. Ivan Lopez y Lopez, another colonel who may have had personal knowledge of the killings because he was in charge of the military's command center on the night of the murders, was later assigned to work in the SIU. This sequence of events demonstrates the pitfalls of entrusting the investigation of killings in which the military are implicated to an agency staffed by military officers which is highly susceptible to pressures from within the military.

Only after U.S. Embassy officials confronted the military with evidence of Col. Benavides' involvement obtained from the statement of the U.S. military adviser did the military appoint its own ad-hoc Honor Commission. The Commission was made up of six high-ranking military officers and two civilian legal advisers whose names were not even revealed to the judge until several months later. Barely a week after its members were appointed, the Commission produced the names of nine defendants, but failed to reveal the basis for its findings. The Commission claimed it had received the nine names from the SIU, but the SIU denied providing them. The Commission's deliberations were secret. The defense was able to use the lack of documentation to imply that the suspects' names were picked out of thin air and that they were unfairly being made into scapegoats by their military cohorts. The defense's inference that the individuals on trial may not have been the guilty individuals but simply those the military put forth to protect its own institutional interests probably contributed to the acquittals of all but one of the junior officers.

After they were named by the Honor Commission, the defendants were kept in military custody and on active duty, decreasing the chance that they would break ranks or provide additional information to investigators.

2. Extrajudicial Confessions

The major evidence against the military men were their confessions, taken while in police custody. Salvadoran law requires that in order to be admissible in court a confession must be given within 72 hours of the suspect's initial detention. Despite the fact that the admissibility of the confessions was affirmed by El Salvador's Supreme Court, the defense repeatedly raised questions about whether the confessions had in fact been made during the requisite time period during its argument to the jury. All of those who confessed later claimed the confessions were involuntary and made under duress. While it is impossible to now ascertain at what point one or all of the defendants confessed because of the lack of cross-examination of the defendants at trial, the level of detail and the consistency of the statements led us to believe the basic story was credible.

3. Problems with Chain of Custody

Salvadoran authorities inexplicably failed to secure the crime scene until several days after the murders, resulting in the possible loss of critical evidence such as fingerprints. In addition, the concern of university officials and human rights activists that Salvadoran authorities were incapable of conducting a thorough and impartial investigation of the killings led them to remove key evidence such as spent cartridges from the crime scene in order to send them abroad for analysis. Once removed from the crime scene, the chain of custody of the evidence became confused and vulnerable to attack. Again, the prevailing climate of fear and lawlessness colored the course of the investigation.

4. Failure to Systematically File Perjury and Obstruction of Justice Charges

Some 66 to 88 troops were deployed in the operation at the UCA on the night of the murders. Although the SIU and military Honor Commission questioned many of the men who participated in the operation, most of them claimed to see or remember nothing or gave contradictory accounts of events. Perjury charges were filed against only four members of the armed forces. These included Lt. Col. Camilo Hernandez, who was charged with destroying crucial military logbooks which showed the movement of troops and vehicles on the night of the murders. The filing of perjury charges against members of the armed forces for impeding an investigation into human rights abuses had never occurred in El Salvador before this case and is a positive development. However, cover-up charges were only filed against four of the dozens who testified and there was no investigation into the existence of any concerted plan to obstruct the judicial process.

5. Failure to Aggressively Pursue Leads Implicating Higher-Ups

Both the SIU and the military Honor Commission failed to aggressively pursue leads suggesting that the involvement of even higher ranking officials than Col. Benavides, despite the existence of circumstantial evidence implicating higher-ups.

For example, both Salvadoran President Alfredo Cristiani and current Defense Minister General Rene Emilio Ponce had personally authorized a search of the UCA which included the Jesuits' residence two days before the murders. The search was perfunctory. No arms or other evidence linking the priests or the UCA to the guerrilla movement was found. The private prosecutors alleged that the purpose of the search was to ascertain the presence of Father Ellacuria, one of the slain priests, and the layout of the Jesuit residence in preparation for the killings. In addition, on the night of the assassinations Col. Benavides attended at least one of two meetings of high-ranking military officers at the headquarters of the high command. It is difficult to believe the Jesuits would not have been mentioned at one of these meetings. The fact that the operation required the deployment of some 66 to 88 crack combat troops in the middle of a guerrilla offensive tends to indicate that higher ranking authorities than Col. Benavides may have needed to authorize the operation, particularly because Col. Benavides, as director of the military academy, had no combat-ready troops under his command. A retired Salvadoran colonel publicly contended in an interview aired on the U.S. television program "60 Minutes" that Col. Benavides never would have ordered the slaying of the Jesuits on his own. An anonymous group of young Salvadoran military officers also issued a public communique alleging that higher-ups were involved. The investigation should not stop with Col. Benavides' conviction. These leads need to be further pursued.

III. THE TRIAL

Trial procedure in this case also pointed up both serious deficiencies in the Salvadoran judicial system and the unfortunate effects on judicial procedure of a long-standing climate of lawlessness and military impunity.

It was difficult for the observer delegation to untangle how many of the problems we saw reflect our own biases as persons trained in the U.S. legal system, and how many were due to the particular nature of this trial. Nonetheless, our discussions with fellow observers trained in civil law systems in Latin America and elsewhere convinced us that the problems we saw did not merely represent generic differences between civil and common law, but rather were the product of a legal system forced to operate within an overall culture where violations of human rights have long gone unpunished.

1. Selection, Use and Instruction of the Jury:

The jury was selected from a limited pool of twelve jurors. Only seven of the twelve showed up on the day of jury selection. Of these, five were seated and one was picked as an alternate. There was no public voir dire of the jurors. Although the lawyers could, if they presented written proof of bias, ask to disqualify a juror for cause, there is apparently no procedure for lawyers to determine whether or not a juror is biased and should be excused for reasons other than a limited number of statutory

disqualifications such as age and literacy. See Salvadoran Crim. Procedure Code Arts. 341-44. Thus, the jurors were, figuratively speaking, a "black box", with little known of their attitudes or impartiality.

In addition, the jurors were literally kept in a black box. For fear of army reprisals, jurors' identity was kept secret and they heard the evidence from behind a wooden partition. While they could see the attorneys and the judge, they could not see the defendants who were lined up in front of the TV cameras. However, defense attorneys closely tied to the military did know the jurors' identities; at one point a juror protested after a defense lawyer called him by name in the courtroom. The implicitly recognized threat against the jurors was just one more reminder of the fragility of civilian justice in El Salvador.

The jury is given enormous power under the criminal code, but under these circumstances it could not reasonably exercise such power. For example, jurors have the power to require the defendants or any other witnesses testify and to formulate questions to the witnesses. The jurors in this case did not avail themselves of any of these possibilities. Because they did not, the attorneys for the parties were unable to cross-examine either witnesses or defendants on their statements. It seemed to us unrealistic to expect jurors whose very identity had to be kept secret because of intimidation to take a protagonistic role in formulating questions to military defendants or witnesses, especially without guidance from the judge.

Moreover, the jury had an incredible amount of discretion in issuing a verdict, which was exercised with no public guidance from Judge Zamora.⁴ The Salvadoran Penal Code requires that jurors, "in silence and introspection, seek in their consciences what impression the proof presented has made in their minds. The law does not ask them to determine the truth of the facts, it only asks: do you have a heartfelt belief [in the guilt of accused]?" Crim. Proc. Code, Art. 363.

This amount of discretion may be appropriate to a jury which can actively participate in the questioning process and which receives detailed instructions on the law. Neither of these things apparently happened -- according to the attorneys for the parties, the judge did not explain the law before the jury retired. Thus, the jury could have decided based on the posturing of defense attorneys, or been prey to other kinds of pressures, without any need to tie a verdict to the evidence or the law.

Such unbridled discretion helps explain the conviction of Lt. Yushy Mendoza, while the two other lieutenants were acquitted. According to a co-defendant's

4/ Salvadoran law provides for limited nullification of jury verdicts, but only in cases of insufficient evidence, not procedural or evidentiary errors. Crim. Procedure Code Acts. 275, 389, 390.

declaration, Lt. Mendoza was charged by Col. Benavides with command of the operation and gave the soldiers on the scene an order to kill the priests. Lt. Mendoza denied being in charge. Lt. Mendoza was acquitted, however, of killing the priests and was convicted only in the death of the housekeeper's daughter, 15-year-old Celina Ramos. There is no evidence in the record specifically tying Lt. Mendoza to this crime, more than to any of the other deaths. The jury's decision either signaled its general belief in Lt. Mendoza's culpability combined with an effort to distinguish that culpability from Col. Benavides' greater guilt, or it reflected some sense of the girl as a more "innocent" victim, or it reflected a negotiation process within the jury.⁵ In any case, Lt. Mendoza's partial conviction is hard to rationally justify and reflects the result of the jury's unbridled discretion.

The seven hours of argument by each of the prosecution and defense often failed to focus on the evidence. The Salvadoran Penal Code charges the judge with deciding when to exclude irrelevant evidence. Crim. Proc. Code, Art. 340. However, perhaps seeking to avoid unduly limiting argument, Judge Zamora allowed practically any argument, no matter how irrelevant or inflammatory, without comment. He allowed defense lawyers to harangue the jury with inflammatory appeals to racism and nationalist feelings and to discuss (and overstate) the amount of time the accused would spend in prison if convicted. Defense lawyers were also allowed to appeal to jurors' religious sensibilities by recounting the supposedly miraculous recovery of Col. Benavides' son from a serious disease, which proved that God favored the colonel and that he could not be a bad man. Finally, the judge allowed attorneys to bring before the jury certain legal arguments, such as whether the confessions had been given within the requisite 72-hour period, that had already been decided by appellate courts.

Finally, the jury was asked to deliberate under extremely difficult conditions. The first fifteen hours of the trial were taken up with a laborious reading of a summary of the 28-volume trial record. This form of presenting the evidence seemed the worst possible way to facilitate a jury's comprehension. Next, each side's lawyers exhorted the jury for up to six hours, with an additional hour for each side's rebuttal. The trial lasted from 8:30 a.m. to past midnight for each 2 1/2 days, including Saturday, leaving participants and observers exhausted. The jury did not even begin its deliberations until after 5:00 p.m., after having sat through an entire day of argument. Under these conditions, the jury could hardly be expected to have the patience to thoroughly examine the written record, and the possibilities for juror irrationality were at their greatest.

Jurors also may have been affected by the staging outside the courthouse of a loud demonstration by the defendants supporters. The demonstration, which involved the playing of "Taps" and the Salvadoran national anthem during the defense argument, was highly audible inside the courtroom and nearly interrupted the proceedings. The

^{5/} Jury verdicts need not be unanimous - a simple majority suffices.

government should not have permitted demonstrators to congregate so near the courthouse or to use amplifiers in a way that interfered with the proceedings. The government's failure to regulate this demonstration is surprising in light of the fact that a demonstration staged by supporters of the victims a day earlier was not permitted to enter the courthouse's perimeter.

2. Use of Co-defendant's Confession

Under Salvadoran law, the confession of one co-defendant cannot be used to prove the guilt of another. Thus, if a lieutenant confessed that he committed a killing under the colonel's orders, the lieutenant's confession could only be used to prove his own guilt, not the colonel's. The application of this rule dramatically reduces the opportunities for winning convictions in human rights abuse cases where killings are carried out by groups of military men acting in concert, since the most likely source of evidence is one participant's declaration against the other. It is interesting to note that under Salvadoran law co-defendants' testimony is admissible in certain kinds of criminal cases -- i.e. kidnapping -- because the law was amended expressly to facilitate convictions of individuals involved in a scheme to kidnap wealthy Salvadorans for profit. There is no rational basis for making a distinction between kidnapping and murder charges. The defense repeatedly emphasized the rule that one accused's confession could not be used against a co-defendant. What effect this rule had on the jury, however, is unclear since the jury convicted Col. Benavides, the one defendant who had not confessed his own participation, and Lt. Mendoza, who also did not confess direct participation in the murder of the 15-year-old girl.

IV. ROLE OF THE UNITED STATES

1. Treatment of Witnesses

Two witnesses who initially gave statements implicating military authorities in the slayings recanted all or part of their testimony after being interrogated by the U.S.'s Federal Bureau of Investigation ("FBI"), raising serious questions about the role of the FBI in the investigation. The first witness was Lucia Barrera de Cerna, a housekeeper for the Jesuits who reported seeing uniformed men present on the UCA campus on the night of the murders. Ms. Barrera's testimony was critical during the early days of the investigation, when the military was denying any involvement in the killings and attempting to blame the incident on left-wing FMLN guerrillas. Fearful of military reprisals, Ms. Barrera fled El Salvador for the U.S. with the assistance of the Jesuits. U.S. officials accompanied Ms. Barrera reportedly to help her through immigration procedures at the Miami airport, but instead turned her over to the FBI's custody without either her permission or that of the Jesuits. The FBI then proceeded to submit Ms. Barrera -- a humble uneducated woman who had never before been outside of El Salvador -- to four days of grueling questioning. Although Ms. Barrera fled El Salvador

because she was afraid of military reprisals, the FBI allowed Lt. Col. Rivas of the Salvadoran armed forces to be present during the questioning. Ms. Barrera recanted her initial testimony.

The second witness was Major Eric Buckland, a U.S. military adviser who in early January 1990 informed his superiors that he had received information indicating Col. Benavides was involved in the assassinations. In his initial video-taped statements to the FBI, Buckland indicated that Col. Benavides had confessed his involvement in the plot to kill the Jesuits and that other high-ranking Salvadoran military officers had prior knowledge of Col. Benavides' intentions to kill the priests. One week later, however, Buckland recanted his testimony and claimed to have no knowledge that Col. Benavides or other high-ranking officers planned to assassinate the Jesuits. During the trial, defense attorneys used both recantations to advantage to show that if witnesses cracked under FBI pressure, the defendants could have been pressured into signing bogus confessions under pressure from the Salvadoran authorities.

The fact that two witnesses, Maj. Buckland and Mrs. Barrera, both recanted their testimony after questioning by the FBI raises serious questions about whether the FBI pressured or intimidated the witnesses in an attempt to perform "damage control." The issue of whether the FBI was seeking to contain allegations of Salvadoran military involvement in the killings within politically acceptable limits by shielding higher-ups needs to be further explored.

2. Withholding of Evidence

The U.S. government has been less than completely forthcoming in producing evidence to assist the investigation. U.S. Embassy officials have refused to provide Maj. Buckland's videotaped statement to the court or the public, claiming that Buckland had cried on the videotapes and that their release would be embarrassing to him and his family. In March, 1990, the embassy did provide the judge with a written transcript of the statements, but continued to refuse to turn over the videotape. The Buckland videotape is one of the key pieces of evidence in the case, and despite Buckland's subsequent recantation, should have been provided to the Court.

The Jesuits, through their U.S. lawyers, have filed several Freedom of Information Act requests with U.S. government agencies and have been dissatisfied with the responses, in which all items of substance they requested have been deemed classified for national security reasons.

The private prosecutors sought to question ten U.S. citizens in accordance with the "letters rogatory" procedure available under international conventions for obtaining evidence from foreign witnesses. The sworn written statements sent by the U.S. Department of State to Judge Zamora in response to the letters rogatory yielded little

meaningful information, and the U.S. denied a request to have lawyers representing the Jesuits present during its interviews with the witnesses.

3. U.S. Training

The troops deployed in the operation to kill the Jesuits were members of the elite Atlacatl battalion, which has received training from U.S. military advisors. Moreover, at least five of the eight defendants on trial, including Lieutenants Espinoza and Mendoza, are known to have attended military training courses at Fort Benning, Georgia or other military installations in the United States. In fact, at the time the killings took place, the Atlacatl battalion was in the midst of a training exercise run by U.S. special forces. The training exercise was interrupted when the guerrilla offensive began and a number of Atlacatl commandos were sent to the capital on an emergency basis and then deployed in the UCA operation. This raises questions about whether the U.S. trainers possessed some knowledge about the Atlacatl's mission. The U.S. government has stressed that its military training courses include instruction on respect for human rights. The participation of U.S.-trained Salvadoran troops in the killing of the Jesuits raises questions about the overall effectiveness of U.S. training in controlling human rights abuses by the Salvadoran military.

4. U.S. Funding of the SIU

The SIU was created as part of the U.S. Agency for International Development's Administration of Justice program in 1985. The United States provides the SIU with approximately \$1.5 million per year, or about two-thirds of its annual budget. Given the U.S. government's role in creating the SIU and continued U.S. funding, the U.S. should be able to exert a significant amount of influence over the SIU's operations. Therefore, the U.S. bears some measure of responsibility for the defects in the SIU's investigation discussed in Sec. II of this report.

5. Involvement and Knowledge of U.S. Military Advisers

U.S. military advisers assigned to El Salvador generally maintain close working relationships with their counterparts in the Salvadoran military and are regularly entrusted with sensitive military and political information. Two U.S. military officers were present at the headquarters of the Salvadoran military high command on the day of the assassinations and may have been privy to the discussions that took place among high-ranking Salvadoran military officers. Major Eric Buckland's statements indicate that U.S. military advisers may possess relevant knowledge about Salvadoran military involvement in the assassinations. Yet no adviser other than Buckland has come forth with relevant testimony. In addition, U.S. embassy officials now claim that Buckland's career has been "ruined" because he appears unreliable as a result of his statement implicating Salvadoran military authorities and his subsequent recantation.

V. CONCLUSIONS

Despite the serious shortcomings in the investigation and in the trial itself, it is important to recognize some gains in respect for the rule of law as a result of the trial verdict. Most importantly, for the first time in Salvadoran history a high-ranking officer has been convicted of a political crime. This sets a precedent for all of Central America. Second, the jury's acquittal of all but one junior officer can be interpreted as a result of widespread skepticism as to how these particular soldiers were chosen by the army hierarchy to stand trial, and thus as an indirect affirmation of the view that responsibility goes higher within the armed forces.

Third, the entire trial was televised and broadcast throughout El Salvador. People could hear the confessions of the soldiers describing their participation in the crimes and the private prosecutors' allegations that the army high command was involved. In a country where censorship and self-censorship of the media are the norm and where all war-related crimes are routinely blamed on "subversive delinquents", the trial was a window on the truth.

Nonetheless, the overall effect of the verdict fell short of what observers had hoped. By absolving soldiers who admitted shooting civilians in cold blood, the verdict sends a signal to the rank and file that they may obey any order, however obviously illegal, and fear no consequences. This is contrary to both Salvadoran and international law.

The Salvadoran Penal Code, at Article 40, limits the defense of superior orders to those cases where the order given is legal and where the order does not involve a manifestly criminal act. Neither of those requirements was met here. An order to kill civilians in cold blood and to leave no witnesses should be both illegal and manifestly criminal even to the most untrained soldier - and all the soldiers involved here were highly trained.

International law at least since the time of the Nuremberg Tribunals⁶ has recognized that a superior orders defense is unavailing in cases of clearly illegal orders. The principle of law has been reconfirmed in the Genocide⁷ and Torture⁸ Conventions.

6/ See G.A. Res. 95 (1), 1(2) G.A.O.R. Resolutions at 188 (1946).

7/ Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1951).

Common article 3 of the Geneva Conventions⁹ specifies that murder of civilians is prohibited during non-international conflicts. The clear inapplicability of a superior orders defense here makes the possibility the jury relied on such a theory in acquitting seven of the defendants quite disturbing.

Because the jury verdict need not have been reasoned, and because any jury instructions were not made public, it is impossible to know whether the judge instructed the jury as to the applicable law. All we can know is that the private prosecutors did stress the unavailability of a superior orders defense during their argument, apparently to no avail.

By exonerating the triggermen, the verdict leaves intact troop morale while weakening the rule of law. In addition, several Salvadoran observers noted the two guilty verdicts concerned the only two defendants who were not members of the elite combat Atlacatl Battalion. The evidence in this case seemed to show Espinoza, the lieutenant in charge of the Atlacatl troops, to be at least as involved as Mendoza, the lieutenant who was convicted. Yet the jury only convicted the officer from the less prestigious military school, and no one from the "front line" Atlacatl.

Moreover, the jury's exoneration of all nine defendants on charges of terrorism is a setback. The Salvadoran Penal Code defines terrorist acts as those which "through the use of weapons or explosives can produce alarm, fear or terror," including "occupations of places destined to public use or for any religious observance." Art. 400. The occupation of the UCA campus, including the chapel area next to the priests' residence, the shooting of the priests between 2:30 and 3:00 a.m., and the subsequent staged firefight, certainly seem to fall within the definition of "terrorism." But due to the lack of any jury instructions in Salvadoran law and the jury's complete discretion, it is impossible to tell whether the jury simply thought the definition didn't apply under these facts, or whether they accepted the defense's argument that the armed forces, as an institution, could not be guilty of terrorism because the army's institutional mission was to protect the population.

Finally, in addition to these effects on the military, the consequences for future prosecutions are only moderately hopeful. The outcome here confirmed that it is possible to obtain convictions of military officers. However, the failure of such a "showcase" investigation and trial to produce convictions of the triggermen, and above

8/ Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984).

9/ See, e.g., Geneva Convention Relative to Protection of Civilians in Time of War, 6 UST 3516; TIAS 3365 (1949).

all the clear limits placed on the investigation upward into the military hierarchy, signal to judges and prosecutors the limits of the permissible. The military has learned that the destruction of evidence, perjury, and stonewalling can be effective in reducing the likelihood of convictions. Given that most war-related or human rights crimes in El Salvador involve anonymous peasants or little-known urban activists without the international fame of the slain Jesuits, the chances of the military being more forthcoming in future cases are slim indeed.

One of the few bright spots remaining is the upcoming outcome of a related civil suit. If successful, the suit may provide an alternative means of establishing institutional responsibility.

In addition to pressing criminal charges on behalf of the Jesuits, the private prosecutors also sought damages from the state for the victims' families and for damage to the UCA campus. Under Salvadoran law, those found guilty of a crime are also civilly responsible and must provide compensation. See Art. 130, Penal Code. The judge will decide the civil claim at the same time he pronounces sentence on those convicted although he may impose liability for damages even against defendants who have been found not guilty. See Art. 508, Crim. Procedure Code.

The private prosecutors have asked for some \$53,000 in damages to the UCA, \$250,000 for the 13-year-old son of Elba Ramos, the priests' cook, and a symbolic payment of 1 colon (12 cents) for each of the murdered priests. They are seeking payment directly from the State on two theories; that the State is indirectly responsible for the act of its agents, and that the State is directly responsible for failing to take preventive measures to protect the Jesuits despite known threats to their safety. If Judge Zamora allows the claim¹⁰ it will set a precedent perhaps as important as the conviction themselves.

^{10/} Art. 245 of the Salvadoran Constitution establishes the state's subsidiary responsibility for harm arising from constitutional violations. This appears to contradict Art. 146 of the Penal Code, which exempts the State and its agencies from payment. Under international law, however, the State is clearly responsible for paying compensation where its agents are involved. See e.g. Caso Velasquez Rodriguez, Inter-Am. Ct. H.R. 35, OAS/ser.L/V/III.19, doc. 13, app. VI (1988) (interpreting American Convention on Human Rights, to which El Salvador is a party).

VI. RECOMMENDATIONS

A. To the Salvadoran Government

1. Members of the armed forces who refuse to cooperate with the investigation of human rights abuses should be systematically prosecuted on perjury or obstruction of justice charges to discourage participation in cover-ups.
2. The pool of potential jurors summoned to appear should be increased and the lawyers should be permitted to engage in an oral voir dire process to eliminate jurors who are biased or prejudiced.
3. The Salvadoran penal code should be revised to allow the testimony of one co-defendant to be admissible against other co-defendants.
4. The judge should play a more active role in eliminating inflammatory and prejudicial rhetoric which has no probative value from the closing arguments.
5. The judge should give the jury detailed instructions on the law. These instructions should be given in public, as the rest of the trial.
6. The investigation into the participation or complicity in the crimes of other high-ranking officers should continue. More than sufficient evidence exists that higher officers knew about plans to kill the Jesuits, were active participators in ordering the crimes, and/or participated in a cover-up. The leads developed by the private prosecution should be followed up, if necessary by opening a new case. President Cristiani must do more to ensure military cooperation with an investigation.
7. Witnesses who come forward must receive adequate assurances of safety for themselves and their families.
8. Better basic police work -- such as isolating the crime scene and placing key evidence into police custody according to standard operating procedures -- is necessary.
9. The state should agree to pay compensation to the families of the victims, as demanded by the private prosecutors in their civil suit.

B. To the U.S. Government

1. The U.S., which funds the vast majority of the SIU's budget, should insist that the SIU be headed by civilians rather than by military officers before further funding is provided.

2. U.S. military advisers should be encouraged to report any information they have regarding human rights abuses by the Salvadoran military. Those officers who provide relevant information that helps avert human rights abuses or assists in the prosecution of human rights violators should receive special commendation from the U.S. armed forces rather than suffer setbacks to their careers.

3. Aid to El Salvador's police and judiciary should only be given in limited circumstances as part of a package involving cutbacks in aid to the armed forces. The trial made clear that even a "professionalized" police and judiciary cannot function properly in a climate where the military may act with impunity.

4. The convictions in this case should not be seen as fully complying with U.S. Congressional demands for the full truth. The U.S. Congress should demand especially that leads indicating the involvement of higher-ranking officers be vigorously pursued. Until they are, military aid should be reduced or suspended.

5. The murder of six Jesuit priests and their staff is but one in a large number of crimes in El Salvador linked to military forces. U.S. aid should be conditioned on the Salvadoran government's establishing a mechanism to institute bona fide investigations of those crimes also.

6. The U.S. government should come forward now with any evidence it may have linking high-ranking army officers to the murders. Specifically, it should provide fuller answers to FOIA requests filed on behalf of the Jesuits and allow attorneys for the Jesuits access to U.S. military personnel stationed in El Salvador at the time of the murders.

7. The U.S. government should make it clear to President Cristiani that there must be no amnesty for those convicted, or for any member of the military involved in politically motivated assassination or other human rights crimes. While a reduction in Col. Benavides' sentence, especially in exchange for cooperation with other prosecutions, might be acceptable, the convictions must stand if any gains for the rule of law are to be more than ephemeral.