January 3, 1991

To: Hon. Joe Moakley
From: Jim McGovern, Bill Woodward

Re: Staff trip to El Salvador

We arrived in El Salvador on Saturday, December 8, and departed on Thursday, December 13. We met, among others, with Ambassador William Walker and other embassy personnel; Ernesto Altschul, acting chief of staff to President Cristiani; Mauricio Gutierrez Castro, the President of the Supreme Court; senior officials in the office of Dr. Ricardo Mendoza, the Fiscal (Attorney) General; Judge Ricardo Zamora, the judge in the Jesuits' case; Fr. Pedro Amada, of the University of Central America (UCA); and Lt. Col. Manuel Rivas, the director of the Salvadoran Special Investigations Unit (SIU).

Although we discussed a range of issues during our trip, this report is limited to the status of the investigation into the murders at the UCA (the Jesuits' case) on November 16, 1989.

SUMMARY.

Perhaps the best summary of the current status of the case was provided by one Salvadoran government official who told us that "the armed forces wrote the first act of the Jesuits' case by murdering the priests; now, they are writing the final act by controlling the investigation."

Although we have more confidence now than after prevous trips that Col. Benavides and others charged with the murders may be convicted, we also believe more strongly than ever that the high command of the armed forces has attempted to limit the scope of the investigation, and protected certain officers from possible prosecution. And we continue to take seriously the possibility

that the murders were ordered by senior military officers not currently charged.

The Salvadoran military has proven so uncooperative in the case that the Bush Administration secretly ordered a slowdown in the delivery of U.S. military aid this past August. The slowdown continued until November, when a resurgence in FMLN military activity prompted renewed aid.

Although Judge Zamora has acted courageously and responsibly in conducting his investigation, President Cristiani has proven either unwilling or unable to change the military's attitude, and the Fiscal General has failed to press the investigation against senior military officers. As a result, the boundaries of serious inquiry have been tightly controlled, and every effort to expand the circle of suspects has been contained by perjury, amnesia, obstructionism or silence on the part of the armed forces.

One of those with whom we spoke compared a competition between the Salvadoran armed forces and the Salvadoran judicial system to a basketball game between the NCAA champions and a high school junior varsity--the winner isn't in doubt, only the point spread. For this reason, both Salvadoran and U.S. officials familiar with the investigation stress the need for continued external pressure in the Jesuits' case: pressure to guarantee the integrity of the trial; and pressure to develop more information about who ordered the murders, who planned them, and who sought to limit the investigation concerning them.

Accordingly, we recommend a continued effort to find answers to the questions that have not yet been satisfactorily answered in the case. We believe there are individuals in El Salvador--especially in the military--who have information important to the case, but who have not come forward for reasons of fear or misplaced loyalty. And we hope that President Cristiani, with help from the United States, will do everything possible to encourage--and enable--these individuals to come forward.

A. STATUS OF THE CASE.

On December 7, Judge Zamora announced his decision to go to trial. All nine of the defendants originally charged, including Col. Benavides, were accused of murder; eight of the nine were accused of terrorism; and Col. Benavides and three lieutenants were charged with planning the crimes. In addition, Lt. Col. Camilo Hernandez and Lt. Yusshy Mendoza were charged with destruction of evidence (i.e., the burning of logbooks indicating the arrival and departure of vehicles from the military school).

We were assured repeatedly that the decision to go to trial does not mean the end of the investigation. New evidence may be developed against the defendants and entered into the record during an eight day period following defense appeals of the decision to go to trial. Evidence against other persons may also be developed and used to initiate separate investigations against those persons.

An estimated three to four months will be required to consider the expected defense appeal. The appeal will be considered by a two judge appeals court, which will concern itself with the procedural aspects of Judge Zamora's investigation.

After the appeal, there will be an eight day period during which either the prosecution or the defense may submit new evidence. After that, it will take an estimated two months for the judge to prepare his case, followed by jury selection. The trial itself will only take a day or two. The murder and terrorism charges will be heard by the jury. The judge alone decides on the destruction of evidence charge. We heard conflicting views on whether the planning charge would be decided by the jury or by the judge.

B. THE CASE AGAINST COL. BENAVIDES.

The judge and the Fiscal General's office both stressed their belief that a strong case has been built against the defendants,

including Col. Benavides. Col. Benavides was the commander of the military sector within which the murders took place. He was reportedly the only one authorized to release weapons from the school's supply room; and weapons traced to the military school were used in the murders.

Although Salvadoran law does not generally permit the use of co-defendant testimony, we were informed by the Fiscal General's office that the extra-judicial statements made by those who allegedly carried out the murders may be entered in the record of the trial and read before the jury. Some of these statements directly implicate Col. Benavides in ordering the murders.

The judge also told us that the ban on co-defendant testimony does not apply to the charges lodged against Col. Benavides and the three lieutenants for planning the crimes. Thus, the statements made by the lieutenants could be used to convict Col. Benavides on that charge, even if they are not otherwise technically admissible.

C. MILITARY COOPERATION.

Chairman Moakley's statement in August alleging obstructionism on the part of the military remains current. Asked to testify by the judge, military officers have repeatedly either failed to testify, failed to remember, failed to make sense or failed to tell the truth. Although three have been charged with perjury and two with destroying key evidence, most have simply come in, said virtually nothing, and gone home. Under the circumstances, we believe the judge has done an excellent job of constructing a case out of the scraps of information provided.

One symptom of the attitude of the high command of the armed forces surfaced in late August and September, following Rep. Moakley's criticism of the military's attitudes and the U.S. decision to slow deliveries of military aid. President Cristiani convened a meeting of senior officers, the President of the Supreme Court, and the judge. During that meeting, a firm pledge

of support and cooperation in the case was solicited--and received--from the high command. In a dramatic gesture, President Cristiani then testified in person before the judge after waiving his legal right not to do so. Feverish efforts were then made to persuade the newly-named Minister of Defense, Col. Emilio Ponce, to do the same. Despite the pressure, Col. Ponce refused to do anything more than submit a written statement, as did several other senior officers. Thus, President Cristiani's effort to lead by example was rebuffed, and neither the judge nor the prosecutors have had a chance to question the most senior officers in a sustained way.

D. UNANSWERED QUESTIONS.

After a year of investigation, there remain a host of unanswered questions about details in the case. Many of these were discussed in the April Task Force report, or in the August statement by Chairman Moakley. Without forgetting those questions, we would--at this point--place special emphasis on two basic unresolved issues:

1. Who is pulling the strings?

The most puzzling aspect of the investigation is why some officers and soldiers were seriously investigated while others were not.

According to information developed by Judge Zamora, a special operational command was established at the Military School during the days immediately preceding the murders. The command was headed by Col. Benavides with the assistance of Lt. Col. Camilo Hernandez. Chief staff responsibilities were assigned to Major Oswaldo Vides Lucha, Major Miguel Gonzalez Castillo, Captain Jose Fuentes and another officer whose name we do not have. A unit of the Atlacatl battalion, commanded by two lieutenants, was one of many outside units temporarily assigned to this command.

We are told that, by early January, 1990, investigators believed that the Atlacatl unit had been involved in the killings, but they did not have specific evidence against particular soldiers, nor did they know who had ordered the crimes.

Last January 6th, President Cristiani ordered the detention of Col. Benavides, Lt. Yusshy Mendoza from the military school, and 45 members of the Atlacatl battalion, including two lieutenants. For reasons no one seems to understand, Lt. Col. Camilo Hernandez and the captains and majors who were between Col. Benavides and the lieutenants in the chain of command were not among those detained.

Lt. Col. Hernandez, the second in command, is an experienced combat officer with close ties to Defense Minister Ponce. He was at the military school on the night the murders took place. But he was not questioned by the SIU; he was not detained on January 6th; and he was not charged until it became evident six months later that he had destroyed evidence in the case.

The captains and majors listed above were also at the military school on the night of the crimes. It was their job to know what was going on. But none of them were questioned by the SIU; none were detained; and when they were ultimately questioned by the judge, they all claimed either to have been asleep, or to have seen nothing, heard nothing and known nothing about the actions of the Atlacatl.

Why, at a point in the investigation when the specific identities of those involved in the crimes were--by all accounts--unknown, were the Colonel and the lieutenants detained and subsequently charged, but not those between them in the chain of command? And at whose direction was this done?

During this and previous trips, we have asked this question of Col. Ponce, the Fiscal General's office, the President of the Supreme Court, the SIU, the judge and the U.S. Embassy. None of the Salvadoran officials have a coherent answer. The Fiscal

General's office, the judge and the U.S. Embassy all agree it is perhaps the key unanswered question in the case.

The failure of the investigators to be clear on this point leads inevitably to speculation that the military hierarchy--not the investigating authorities--controlled who was questioned, who was detained and who was charged. It leads to speculation that a deal may have been cut wherein a senior officer--Col. Benavides--was required to take responsibility, while mid-level officers were shielded from prosecution. It leads to speculation that the protection provided to these mid-level officers may have been given in return for their silence during the subsequent investigation. It leads to speculation that the entire investigation may have been a charade calibrated to meet the minimum--and only the minimum--demands of meddlers from Congress and elsewhere.

And it leads to the conviction on our part that officers within the high command knew that Col. Benavides and the Atlacatl unit were involved in the crimes well before the investigators produced ballistics and other concrete physical evidence to this effect. We believe that the reason the military honor board selected on January 6 did not ask any questions is because it already knew the answers. The issue we have not resolved fully is how they came by this knowledge.

2. The role of Salvadoran Military Intelligence.

According to the official record of the investigation, no one from Salvadoran military intelligence knew anything before or after the fact about the planning or execution of the murders at the UCA. For a variety of reasons, we don't find this credible.

First, Salvadoran military intelligence has historically played a key role in identifying, surveilling, questioning and--at times--eliminating those suspected of subversive activity. Given the military's historic suspicion of the Jesuits, coupled with

the tensions caused by the guerrilla offensive, it would have logically kept a very close eye on the UCA.

Second, military intelligence officers were, in fact, deeply involved in events leading up to, and immediately following, the murders:

--On November 11, a military intelligence officer, Captain Herrera Carranza, reported that troops were being fired upon by guerrillas inside the UCA. This firing was never confirmed.

--On November 13, an intelligence officer accompanied a military unit in a search of the UCA, including the living quarters of the Jesuit priests. The unit that conducted the search is the same unit that allegedly murdered the Jesuits two days later. The intelligence officer was instructed to join the search by Captain Herrera and by the Director of Intelligence, Col. Guzman Aguilar.

--Early on November 16, Captain Herrera entered a meeting of intelligence officers and informed them that the Jesuits had been killed. Although the captain testified that he learned the information from commercial radio, no commercial radios were broadcasting the information by that time.

Third, the presence of the intelligence officer during the search of the UCA on November 13th was originally concealed from investigators.

Fourth, the intelligence officer who joined in the search lied about it afterwards.

Fifth, the headquarters of military intelligence are located within a mile of the UCA and intelligence units were deployed along the highway adjacent to the UCA on the night of the murders. Intelligence officers would had to have been deaf, blind or heavily sedated to have been unaware of the events at the UCA during the half hour they were going on.

Finally, not long after the murders, Col. Guzman Aguilar was transferred to the post of military attache in Costa Rica, a country with no Army. He had served as head of intelligence for less than three months. Captain Herrera was assigned to a unit in a conflictive zone and was soon killed.

The only serious effort to unravel the possible involvement of military intelligence officers in the Jesuit murders has been made by Judge Zamora, and he has not been able to get very far. It remains unclear why an intelligence officer was ordered to help search the UCA; what, if anything, intelligence officers were telling the high command about the UCA's relationship to the guerrilla offensive; whether Col. Guzman Aguilar, a classmate of Col. Benavides, was informed that a plan to murder the Jesuits would be carried out; how Captain Herrera learned that the Jesuits were dead; and why Col. Guzman Aguilar was so quickly transferred out of the country.

These questions may not be answerable. But they should continue to be asked.

THE AMERICAN OFFICER AND 'PRIOR KNOWLEDGE'

A controversy has arisen in recent weeks about the possibility that an American military officer, attached to the U.S. Embassy in San Salvador, had prior knowledge of a plan to kill the Jesuits. On January 12, 1990, in a sworn, videotaped statement to the FBI, the officer made a very detailed statement during which he claimed to have been told by a senior Salvadoran military officer on the day of the murders that an operation would be carried out at the UCA that night. The officer formally recanted this statement six days later. Neither the statement, nor the withdrawal of the statement, were transmitted by the U.S. Government to Salvadoran judicial authorities until this past October.

After discussions with the FBI, the U.S. Embassy and the Salvadoran government, we have developed the following rough

chronology of events surrounding the Executive Branch's handling of the statements made by the American officer:

1) Dec. 20, 1989--date of a conversation the American officer claims to have had with Salvadoran Col. Carlos Aviles, during which Col. Aviles told the officer of another conversation in which Col. Benavides allegedly admitted his involvement in the murders to Lt. Col. Manuel Rivas, the director of the SIU.

2) Dec. 25, 1989--the officer writes a letter to his sister describing the conversation with Col. Aviles. The letter does not mention prior knowledge.

3) Jan. 2, 1990--the officer informs his superiors at the embassy of the conversation with Col. Aviles. Again, there is no mention of prior knowledge. Embassy officers inform Salvadoran Chief of Staff Col. Ponce. Col. Aviles denies that the conversation took place.

4) Jan. 3-6--both the officer and Col. Aviles take lie detector tests. In both cases, the results either indicate deception or are inconclusive.

5) Jan. 6--the officer departs for the United States.

Jan. 12--During a videotaped interrogation by the FBI in Washington, D.C., the officer adds several new elements to his story:

--he claims that Col. Aviles visited the military school in late October, at the direction of Col. Ponce, to persuade Col. Benavides not to proceed with plans to kill the Jesuits at the UCA;

--he claims to have been told by Col. Aviles on November 15th, the day of the murders, that the military was planning to carry out an operation against the UCA that night; and

--he claims that Col. Aviles visited his room early on the morning of the 16th, at roughly the time the murders were taking place.

Jan. 13--the FBI provides the U.S. Embassy and Assistant Secretary of State Aronson with a summary of the officer's statement. Signed statements and a videotape are later provided to the Embassy.

Jan. 14--the officer calls the FBI to say that the elements of his story indicating prior knowledge of the crimes are not true.

Jan. 18--the officer formally recants his statements concerning prior knowledge.

Sept. 28--an Embassy official comes across the officer's statement concerning prior knowledge in preparation for the officer's formal testimony in El Salvador.

Sept. 29--the officer testifies before the judge in San Salvador and includes in his opening statement a denial of any prior knowledge.

early October--Executive branch officials discuss whether or not to make the officer's statement concerning prior knowledge available to the judicial authorities in El Salvador.

mid October--Rep. Moakley learns of prior knowledge statement and asks that it be transmitted immediately to the judge in San Salvador.

October 22--Judge Zamora's records indicate informal receipt of the officer's statements. The Government of El Salvador subsequently makes a formal request to the United States for the videotape and related documents.

The obvious question is why U.S. authorities did not make the officer's statement concerning prior knowledge available to

Salvadoran judicial authorities early last year.

The reason, according to U.S. Embassy officials in San Salvador, is that the FBI had pronounced the officer's testimony concerning prior knowledge as 'not credible', and instructed them, in any case, not to share the statements or videotape with anybody. The FBI, however, denies characterizing the officer's statement in that manner and says it had assumed that the material would be shared with the Government of El Salvador. The FBI also claims to have sent a cable to the Embassy, dated January 24, suggesting that a further investigation of the officer's statements be conducted. The Embassy says that it never received such a cable.

In the middle of this confusion, in late January or early February, the Embassy decided to show portions of the videotape to President Cristiani. The President did not suggest that the videotape, or accompanying statements, be made available to the judge.

During our visit, the President's deputy chief of staff, the Fiscal General's Office and Judge Zamora all agreed that the statements made by the American officer should have been turned over to Salvadoran judicial authorities for further investigation, despite the fact that the officer had recanted part of his story.

It is our own judgment that the officer's story is sufficiently important and sufficiently detailed to have warranted immediate and thorough investigation. The Executive branch should not have taken upon itself the responsibility of dismissing that part of the officer's January 12 statement that dealt with prior knowledge, despite the officer's decision shortly thereafter to recant. The result of this decision was to delay an investigation of those statements for almost ten months.

Despite this criticism, we also discount the theory put forward in a recent edition of Newsweek magazine that the Administration made a conscious effort to suppress the officer's statement in

order to protect Col. Ponce, Col. Aviles or someone else in the Salvadoran military. The officer's statement only became known to the Task Force after the issue of its possible release to the Salvadoran government had been resurrected by Embassy officials in late September. If a decision had been made to suppress it, it would presumably have stayed suppressed.

Our conclusion is that the American officer's statements were not turned over to the Salvadoran government (aside from the screening for President Cristiani) for three principal reasons:

1) a gross and to-date unreconciled failure of communications between the FBI and the Department of State;

2) the emotional, confused and inconsistent nature of the officer's statements; and

3) a lack of confidence by the U.S. Government in the capacity of Salvadoran authorities to investigate this kind of information in a productive and professional manner.

We repeat that, given the potential significance of the officer's statements, the importance of this case, and the need to build professionalism within the Salvadoran justice system, it is unfortunate that the information was not turned over and that investigations were not conducted immediately to test the veracity both of the officer's statements of January 12 and his subsequent refutation of some of those statements.

We recommend that the Executive be urged to cooperate with any efforts on the part of the judge or other appropriate Salvadoran authorities to investigate this matter further.

EL SALVADOR STAFF REPORT--ATTACHMENT (CONFIDENTIAL)

This attachment summarizes information provided to us on a confidential basis by individuals who do not wish to be identified. As a result, we cannot, in most instances, verify the information.

o After the meeting of the high command on November 15th, Col. Benavides returned to the military school and told a group that included Lt. Col. Camilo Hernandez, the captains and majors in his operational command, and the lieutenants that he "had received the green light to go after the UCA". One of the officers then said "but Ellacuria isn't there." Another said "Yes, he is, he came back." (a military source)

o At the meeting at the military school on the night of the murders, Benavides asked those present to volunteer to participate in the operation. Lt. Yusshy Mendoza said no, but was forced to accompany the troops nevertheless. (civilian source)

o The AK-47 used in the murders belonged to Lt. Col. Camilo Hernandez. Hernandez was deeply involved in making preparations for the murders. (Military, embassy sources)

o Also after the meeting of the high command, Gen. Bustillo returned to the Air Force headquarters and told a small group of his officers that a decision had been made to kill Ellacuria. (military source)

o On the morning of the 16th, a group of military intelligence officers were in a house near the UCA, reportedly with some women. They saw the Atlacatl enter the UCA, and they observed the bodies in the morning before returning to their headquarters. (military source--second hand)

o A person who works for the military was told during the day of the 16th that the Atlacatl unit was responsible for the murders.

The information came from a friend who was with an infantry unit stationed in the same sector as the UCA. This person did not share the information because "in El Salvador, you talk until you learn the truth; then you shut up." (military source)

o According to one Embassy officer, it is illogical to believe that the high command ordered the murders. The reason is that the high command would have used a trained death squad, such as the one run out of the Air Force, to perpetrate the crimes. We know of no public acknowledgment by the U.S. Government of a death squad run out of the Air Force.

o A lieutenant colonel has told the embassy that Lt. Col. Rivas of the SIU told other members of his tanda that Col. Benavides had admitted his responsibility for the murders. This essentially verifies Major Buckland's original story. The same source, however, claims that there were two American officers in the Democracy Tower on the night of the murders. The embassy says this is not true. The source has also asked the embassy for help with visas. (embassy source)

o On December 10, 1989, Col. Ponce said at a meeting of the high command that "we would not be here if I had not made the decision I did." To this, Gen. Bustillo (the hard-line commander of the Air Force) replied "you have done well my Colonel, but we must continue to take a very hard line." The interpretation of our source is that these statements referred to the murders at the UCA. (military source)

o At two meetings with other military officers in January, 1990, Col. Ponce called Col. Aviles a "traitor" for talking to Major Buckland. (military source)

o The new director of the military school reported to Col. Ponce immediately upon taking command last January or February that the logbooks indicating the comings and goings of vehicles from the school were missing. Col. Ponce did not pass this information on to the Minister of Defense, to President Cristiani, or to

judicial authorities. (military source)

o According to his orderly, Captain Chavez Garcia of the Treasury Police refused an order from his commander, Col. Heriberto Hernandez, to murder the Jesuits. It was only then that the decision was made to give the job to Benavides and the Atlacatl. Captain Chavez was killed in May by a single shot through the head while serving in a special detachment away from his normal unit. The armed forces reported that he was killed in combat. Captain Chavez' orderly has since disappeared. (military source) (An embassy source reported that, in December, 1989, Capt. Chavez had urged the removal of Lt. Col. Rivas as head of the SIU, because he was too weak and would not seriously investigate the Jesuit murders).

o President Cristiani has been told by the military not to press too hard in the Jesuits case or he will be killed. The threat was reportedly conveyed to him by retired General Vides Casanova, whose wife is the sister of Cristiani's wife. (civilian source)

o The two lawyers in the fiscal general's office who have had day to day responsibility in the case, Sidney Blanco and Henry Campos, are resigning as of January 1. They say they have fought continually with their superiors for the right to put serious questions to witnesses in the case. Instead, they have been limited in what they could ask, and have even been barred from participating in crucial interviews (e.g. Lt. Col. Rivas and his assistant). They believe the military is engaging in a major and successful coverup in the case. For reasons of personal safety, they will not go public with their accusations. (source: Blanco and Campos). (Note: a Salvadoran newspaper has reported, and retracted, a story that Blanco and Campos have been dismissed by the Fiscal General)

o There is a difficult to pin down story going around that the defendants have been told by their superiors that they can expect to go to jail, but only for 2-3 years. (several sources--none specific)

o The armed forces have conveyed to the judge the message that the military is willing to accept the conviction of those charged with the crimes (source: embassy)

o A U.S. military adviser assigned to the Atlacatl told a Salvadoran officer this summer that he had known in December that the Atlacatl had committed the murders. As a result, the two officers who had been assigned to the Atlacatl are being flown back from the Persian Gulf for questioning. (source: military)