

Central America Working Group

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TO: House Foreign Policy Aide
FROM: Bill Spencer, Cindy Buhl and Ann Butwell
RE: Commentaries on the Recent "Jesuit Trial" in El Salvador

Later this week, Congress may debate the short-term future of U.S. military aid to El Salvador during consideration of the Continuing Resolution. Because many in Congress have closely monitored the investigation of the November 1989 murder of six Jesuit priests and their two co-workers, we would like to bring to your attention to the following two articles written by official observers of the "Jesuit Case" trial, as well as an editorial by James S. Torrens, S.J., editor of America: The National Catholic Weekly:

- * **"U.S. Should Not Subsidize Salvadoran Murderers,"** by J. Donald Monan, S.J., The Boston Globe, 8 October 1991;
- * **"Milestones in El Salvador,"** editorial, America, 12 October 1991;
- * **"The El Salvador Trial in the Jesuit Case,"** by Vincent T. O'Keefe, S.J., America, 19 October 1991.

Thank you for your attention to this important matter. Please feel free to call us for further information.

US should not subsidize Salvadoran murderers

J. DONALD MONAN

SAN SALVADOR

Judge Ricardo Zamora's reading last week of the guilty verdict against Col. Guillermo Benavides for the murder of six Jesuits, their housekeeper and her daughter surprised the foreign observers in the crowded courtroom; puzzlement spread at the conviction of Lt. Yussi Mendoza on the sole count of murdering the 15-year-old Celina; and every breath of air drained from the room as Zamora read the verdict "Not guilty" against each of the soldiers who had confessed the lurid details of killing the defenseless victims on the University of Central America campus on Nov. 16, 1989.

What's the sense of convicting the one defendant who was not present on campus that gruesome night and declaring not guilty the man who confessed to using an AK-47 on three of the victims? Why exonerate the man who admitted killing both women, while convicting someone else only of the daughter's murder? And if all the confessed murderers of the Jesuits were not guilty, why was there a guilty verdict against the one defendant who admitted nothing?

The verdicts, to some, displayed a complete lack of rationality; they left a legacy of eight bullet-riddled bodies but no one guilty of firing the bullets. Perhaps the most haunting part of our dissatisfaction was that no member of the Green Beret-trained Atlacatl Battalion that confessed to the murders was found guilty. Neither of the two persons convicted belonged to the Atlacatl, nor were they part of the permanent command structure of the military.

Whatever the implications of this grim fact, the jurors did employ a

principle of sorts in framing their unusual verdicts. In declaring Col. Benavides guilty, they were holding accountable the person who gave the orders. In exonerating the others, they were not denying their murderous actions but declaring they were not "culpable."

Even though Salvadoran law accepts the principle recognized since the Nuremberg trials that soldiers are not obliged to follow illegal orders, the jury seemingly reflected the ordinary Salvadoran person's understanding: the military's standing operating procedure is that soldiers have no choice but to follow orders.

All international observers, but especially those from legal agencies fighting government-sponsored terrorism and murder, were saddened at the freeing of those acting under orders.

But in rendering the verdict against Benavides, the jury gave new incentive to dispel the deepest source of dissatisfaction since the investigation began, namely the refusal of information by both US and Salvadoran authorities that would corroborate or dissolve the powerful weight of circumstantial evidence that other members of the military command, in addition to Benavides, were intellectual authors of the crimes.

Shortly after the trial, Father Jose Maria Tojeira, the superior of the Jesuits in Central America, gave a televised reflection on the outcome of the proceedings. While he regretted that all eight defendants were not declared guilty and voiced his belief that only partial truth and justice had been achieved, he unequivocally accepted the judgment of the court.

In a poignant reflection on the possibility of President Cristiani's granting a pardon to Benavides and

Lt. Mendoza, Father Tojeira said that he and his fellow Jesuits had never sought vengeance, only truth and justice.

With the trial over, he said it was time to think of forgiveness and of pardon — indeed time for a reintegration into society that a pardon brings. Salvadoran prisons, in his view, simply destroy. If the convicted parties initiated the request and if done fully in accord with the law, he would support a decision to grant a pardon.

There are obvious dangers in supporting a government's pardoning its own agents for their terroristic acts. And yet Father Tojeira's disarming support for pardon and forgiveness, whatever its legal wisdom, seemed strikingly worthy of the scholarly religious men and defenseless Salvadoran women who had surrendered their lives to violence.

Clearly the trial is over; those acquitted shall not be subjected to double jeopardy. But the jury's willingness to convict the one person it was convinced gave the order, even if he bore a colonel's protective rank and was not present at the scene, makes imperative renewed efforts to determine whether Benavides had partners in formulating the orders or was acting under orders himself.

Father Tojeira will look to agencies in El Salvador to make that determination. The bizarre outcome of the trial makes it all the more important to America's integrity that federal agencies finally grant access under the Freedom of Information Act to the documents they hold secret for reasons of "national security."

The final question addressed to Father Tojeira during his interview should be addressed as well to Americans. What link should there be between the conviction of the murderers and the provision of con-

tinuing military aid to El Salvador? His response was immediate and unambiguous. If the trial were conducted as the price for American military aid, he would dissociate himself from it completely.

Americans, however, must answer the question differently.

The most important issue for the future of El Salvador throughout the investigation of the Jesuit killings has been the power of the military to act with impunity and stand unaccountable for its most egregious violations of human rights.

As long as that impunity remains, the US should refuse all military assistance at the risk of being partners in unspeakable crimes. This trial has done nothing to indicate that the autonomy of the Salvadoran military and its impunity from punishment for its outlaw actions is in any way reduced. The temporary surrender of one colonel's career, while murderers in government uniforms go free, is scant evidence that the military-command structure or its relationship to civilian or judicial control is even minimally altered.

As the rhythm of the judge's repeated "Es culpable? No" died in the courtroom and people rose to depart, the eight defendants that had stonily faced the audience for three days remained seated in their rigid line of chairs. Without changing expression, they silently joined hands in a symbol of unshaken solidarity.

Unless the United Nations' efforts to negotiate peace in El Salvador succeed in the fundamental task of subjecting the military to the demands of justice under civilian control, the congressional vote to restore military aid to El Salvador must remain resoundingly negative.

Rev. J. Donald Monan is the president of Boston College.

MILESTONES IN EL SALVADOR

LAST WEEK at the United Nations, under the aegis of Secretary General Javier Pérez de Cuéllar, the five leaders of the F.M.L.N. (Farabundo Martí National Liberation Front) and the President of El Salvador, Alfredo Cristiani, agreed to dismantle the roadblocks to peace. They devised a National Commission for the Consolidation of Peace, to oversee the expunging of human rights offenders from army ranks, the reduction of the armed forces, incorporation of some F.M.L.N. members into the national police, and formal recognition of land holdings acquired by family members of the F.M.L.N.

A breath of relief and hopefulness went through the U.N. halls, to say nothing of El Salvador, at this pact, with its commitment to a cease-fire within weeks. Everything in this exhausted country has been crying "Truce!" A drought has hit agriculture and cut into the hydroelectric supply, already plagued by sabotage. Medical care and education for any but the well-to-do are languishing. The economy, declining over 20 percent in real per capita income since 1980, is propped up by remittances from the million refugees and by U.S. aid. Labor unions have been squelched. The F.M.L.N., for their part, have had no glimpse of the electoral support, the popular mandate, they were hoping for.

Meanwhile, back in San Salvador, Judge Ricardo A. Zamora conducted the trial by jury of a colonel, three lieutenants, and five soldiers of the Atlacatl Battalion (U.S. trained) accused of murdering six Jesuits, their housekeeper, and her daughter on Nov. 16, 1989, at the Central American University. The five jury members heard the case from behind a wooden panel, to mask their identity against death threats, while everyone else in the country watched on television. The procedure, curt by American standards, consisted mostly of the judge digesting the testimony for the jury, plus statements by the two prosecutors and the defense attorney.

The three-day trial ended late Saturday, Sept. 28, with a verdict of guilty against Colonel Guillermo Benavides, neighborhood commandant during the murders. Lieutenant Yushy Mendoza was found guilty also of executing 15-year-old Celina Ramos. They each face a 20- to 30-year sentence. The other soldiers present were exonerated, having retracted previous confessions.

If those exonerated are not culprits, then who? The truest answer appeared outside the courtroom where family members of the armed forces, led by another of the colonels, chanted the praises of the armed forces, like rooters at a football game, and repeated the very accusation against the Jesuits—"intellectual terrorists"—which had signaled their death two years previous. Ironically, Ignacio Ellacuría, S.J., the principal target, had

returned to the capital during the rebel attack as a possible mediator, at the express invitation of President Cristiani.

What light do these two coincidental events, the truce and the trial verdict, cast on one another? A somber note is struck by the report that Judge Zamora is to "begin a study program in Europe as soon as practicable." As well say that he is going away immediately for his health. Intimidation and fear, in other words, give no sign of abating.

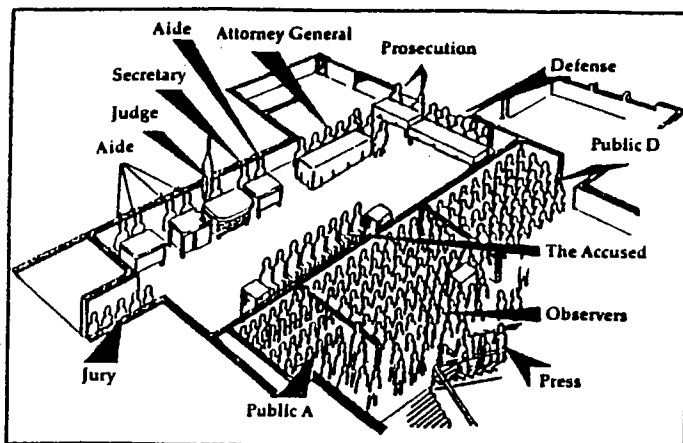
Those of us brought up on a gospel of forgiveness—how are we to react to the trial, the verdicts, the rumor of amnesty? Admitting that forgiveness is a unilateral act, we yet recognize that nothing is mended without some change of heart, some beginnings of conversion. Pre-trial tears do not afford very reliable evidence, and retracted confessions, as in the Jesuit case, much less so.

The guilty verdict fell upon the man most responsible, and upon a major participant. Otherwise the old rationalization prevailed, that the triggermen were just obeying orders. One of them, face to face with his old high-school principal, Segundo Montes, S.J., reportedly wept. To resist army discipline would have cost him dearly, but that is the price of being a moral agent and not a robot.

Why, we ask again, were the Central American Jesuits so determined to prosecute this case? Because it was by implication a class-action suit, brought on behalf of some 70,000 people tortured and executed by the "peacekeepers" in the last dozen years. This lawsuit was one last attempt to crack the facade of impunity, which has intimidated even the United States Government (see p. 246).

RUMOR now mentions a possible amnesty from President Cristiani for Benavides and Mendoza, as part of the settlement with the F.M.L.N. Amnesty, however, would release the two condemned officers and absolve the inner circle of the military with a slap on the wrist. Far from contributing to the goal of "purification" of the armed forces, it would vindicate the most viciously pragmatic among them and, by trivializing the punishment, keep alive the old slander against the Jesuits.

Ignacio Ellacuría and his companions did not die for a tranquil El Salvador. They died for a just state of affairs, for social change. They refused to accept that curse of Latin America, the stratification of classes. They would be greatly troubled by, vociferous about, the trend to privatization in the country. They would remind everyone, after the recent torching of *El Diario Latino*, that El Salvador still has a servile press. But they would also plead with the F.M.L.N. to release hostages. And they would rejoice, as they did when alive, at all genuine negotiations, each faltering step, toward peace with justice.



The El Salvador Trial in the Jesuit Case

By VINCENT T. O'KEEFE

THREE JESUITS from the United States went to El Salvador for the trial of the nine accused in the killings at the Universidad Centroamericana (UCA), Nov. 16, 1989. They were Vincent O'Keefe, S.J., former General Assistant to the Jesuit Superior General; Charles Currie, S.J., rector of the Jesuit Community at St. Joseph's University, Philadelphia; and Donald Monan, S.J., president of Boston College University. Father O'Keefe represented the Jesuit Conference (central organ of United States Jesuits); Father Currie, the Association of Jesuit Colleges and Universities; Father Monan, his own university. Father O'Keefe narrated the events to James S. Torrents of AMERICA:

The trial in the Jesuit case started once the notices got to the jurors, that is, on Thursday, Sept. 26. It was held in the Supreme Court building, San Salvador, for lack of any other adequate court facility. The Supreme Court chose its venue according to the place of the crime, the Fourth Penal District, under Judge Ricardo A. Zamora. We give Judge Zamora high marks for pressing on against delays, stonewalling and non-compliance by government, military and even the United States.

The courtroom was divided, as you can see, with ourselves in Public A, a section for "The Offended Party." José María (or "Chema") Tojeira, S.J., the Jesuit provincial, was at left front and María Julia Hernández of *Tutela Legal* (the human rights office of the San Salvador archdiocese) at right front. Near me was the brother of Julia Elba (Ramos), who looks just like her, a nice man.

In the middle were "The Observers," na-

tional and international. This included embassy people—for example, the French Ambassador, the Spanish; our man, Mr. William Walker, came only briefly. Also in evidence was James McGovern, aide to Congressman Joe Moakley, who kept pushing for the trial. We met some wonderful people from Amnesty International, Americas Watch and a few Uruguayans and Argentinians with experience of military terror. Two groups deserve special praise, the Lawyers Committee for Human Rights, based here in New York, which has pressed the Jesuit case and publicized it, and the Institute for the Defense of Human Rights at the UCA, once headed by Segundo Montes, S.J., and now, after his death, by a Canadian Jesuit, Michael Czerny, S.J. The Institute was a fountainhead of documents.

Section Public D was for relatives of the accused. The mother of Lieut. José Ricardo Espinoza, a graduate of the Jesuit secondary school, led family members in prayer, with their heads bowed, at the trial. At the end, catching Mr. McGovern's eye, she held up her Bible and pointed to it in token of vindication. Her husband declared afterward that the verdict was a judgment of God, not a human judgment at all.

Behind us was the press. They televised the entire trial nationally, which infuriated the military, for the soldiers, in uniform, were seen hour by hour seated in a line and looking out at the courtroom. I will never forget it, sitting eyeball to eyeball with them. The room was very hot, in the glare of television lights.

Against the front wall sat the judge, his secretary, aides for reading the documentation, and the Attorney General's people at a table. At right angles to this table you have the two prosecutors for the Jesuits, Henry Campos and Sidney Blanco. Campos and Blanco had originally led the prosecution

for the Attorney General, until finding themselves forbidden to issue statements, bring perjury charges against any more of the soldiers or attend the interrogations by the Special Investigative Unit of the army. Two days after the murder, then-Attorney General Colorado had attacked the bishops of San Salvador for "this questionable ideology of the Church of the Poor," urging them to leave the country, writing to their fellow bishops and even to the Pope against them, so you can see the bias.

As for the chief defense attorney, Carlos Méndez Flores, imagine this: On the last morning, Saturday, a group in favor of the accused and led by a colonel came marching outside the court, with chants and speeches broadcast by loudspeakers. At one awful moment, when you could hear the national anthem and then taps in the background, Flores reminded the jurors, "So many people have been killed because of this case," and he named six names. "How do we know what could happen to us when we go out of this room?" Most found that to be an open threat. Flores also kept accusing Chema, Francisco Estrada, S.J., (president of UCA) and María Julia of "tampering with evidence."

THE JURY, called the Tribunal of Conscience, were five in number, three men and two women, plus a woman alternate, chosen on the spot from a dozen persons listed and available. The judge gave them 80 questions, to be answered "Sí" or "No." "Interior conviction" was the key phrase in each question; for instance, "Do you have the interior conviction that Colonel Benavides was guilty of the murder of Father Ellacuría?"

They took great care to mask the jurors' identity. A wooden partition screened them

from the observers and defendants. But many people had access to them, for example, a medical team and those who brought them food. The attorneys had the list of names and, while making their case, came right over to face them. Both the prosecutor and defense lawyer pressed them, "Please do your duty and answer 'Sí' or 'No' to all these questions." We were far from feeling that this whole trial took place in an objective atmosphere.

THE TRIAL finally started at noon on Thursday, Sept. 26. From then until midnight, and from 8:30 to noon the next day, the judge's aides read from the official documentation, 6,000 pages of it in 28 volumes. In monotone, at top speed, they covered about 200 pages selected by the judge. The jury did not get a look at this material, but did have a hotline to ask the judge for clarification. They also could question the accused but never did.

In view of the jurors, and the whole courtroom, was a big white board with the names of the accused and the accusations. The first item was "murders," with the number of the penal code and the lists of victims. Then there was "acts of terrorism." All were accused on the two above scores, but some excluded on the third, "preparatory acts of terrorism." The documents often referred to the accused by their nicknames. A call came on the hotline asking the judge to write these in, so the jurors could keep straight who was who.

On the left was "Samson," Tomás Zapate Castillo, with his head tilted back, his eyes hooded. He confessed to killing the two women. Actually Ascensio, the soldier who deserted and is probably in Guatemala, had to finish them off. The second man, Pérez Vasquez, killed Joaquín López y López, S.J., the oldest Jesuit, when Father López grabbed his foot. We had some sympathy for him. He never changed expression, did not seem to know exactly where he was.

Next was Lieut. Yushi Mendoza, convicted of the murder of Celina (Ramos). He saw the women there, and either gave orders to finish them off, or did not intervene. Why hold him guilty of killing the daughter and not the mother, who was trying to protect the girl with her body? Something strange about that. The fourth was the famous "Hangman," or in the Indian language *Pilijay*, Amaya Grimaldi, who handled the A.K. automatic rifle, a Soviet rifle difficult to manage. He confessed to killing

Fathers Ellacuría, Martín-Baró and Montes. He is the one everybody was sure would be convicted.

Then came Lieutenant Cerritos, or "Lynx." Next Vargas, "Satan" or "Toad," who confessed to killing Juan Moreno, S.J., and Amando López, S.J. Then Colonel Guillermo Benavides. Finally, Lieut. José Espinoza, called *Toro*, "Bull," the alumnus of our Jesuits' school San Jose. He came over at a break in the proceedings to say to Father Tojeira, "Inside this uniform there's a human being who is innocent, believe me."

All but Colonel Benavides had made extra-judicial confessions to the Special Investigative Unit of the armed forces, an entity financed by the United States to correct problems in human rights. Two witnesses signed each confession, attesting to freedom from coercion. They were then accepted by Judge Zamora, confirmed by the appellate court and once more by the supreme court. When the proceedings began, those confessions were held valid, and were the key piece in the trial. Later the seven men denied them, saying they did not know what they were signing. Matter from the confessions emerged in the documentation read.

The trial, or *vista publica* ("public viewing"), concluded about a quarter to five on Saturday evening, at which time we had to leave the courtroom. The judge was alone with the jury then, and presumably gave an instruction. Then they went into a private room. They had elected a president—we would call him a foreman—and a secretary, and in this case answered their 80 questions. A simple majority would be enough to convict, which to me is strange. By general opinion the evidence was strong that the soldiers who had confessed to the actual killing would be judged guilty. The big question then was, would the jury reach up and even get the colonel?

At 10:30 P.M. the judge called us back to hear him read out the jury's answers on each charge, without mentioning who voted how. The verdicts, reversing expectations, condemned two men, the only non-members of the Atlacatl Battalion, Lieutenant Mendoza and Colonel Benavides. Benavides had not in fact been present but as the person in charge of the area was held ultimately responsible. (At least that is what we think; we got no reasoning supporting the verdict.) They convicted the one they think gave the order, but those who carried it out were found innocent.

The jury seems to have thought, "Go for

those who gave the command. Keep this under the heading of obedience." Actually they superimposed military law on Salvadoran law, which says that one is not to obey an illegal command. We spent a lot of time afterward discussing commands in wartime. Those from a background of U.S. city politics also had to ask, "Was the fix in?" The conviction of Mendoza seems hard to explain otherwise.

I asked some Salvadorans afterward, "How do you feel about this?" They said, "Listen, we're very happy. Finally, there's been a breach in that impunity." I asked, "Do you think the soldiers were guilty?" And they said, "Oh, yes." "Doesn't that bother you?" "Oh, yes, but at least we made a dent." We were talking in this Jesuit Case, really, about tens of thousands of lives lost and people on the street who are mortally afraid. So a positive first step has just been taken.

On Sunday, after the trial, many observers asked to go up to the UCA to the site of the killings. It was like a pilgrimage—they were so touched. Father Tojeira was interviewed on television the next Monday morning. He said, "We have to be happy that the Salvadoran institutions did function. This doesn't happen every day." In discussing a possible amnesty by President Cristiani, Father Tojeira chose to speak rather of pardon. Amnesty, he said, wipes out the whole thing; pardon does not. "If pardon is instituted by legal means, we would support it. After all, we are Christians."

ONE OF the observers from the United States, an investigator into crimes against humanity who had lived a long time in Latin America, advised Father Tojeira not to jump too soon to pardon. He answered, "I'm speaking from a Salvadoran and a priest's perspective." But he also said of the trial, "This is just a step. We want to get to the complete truth." A lot of evidence still reveals that these executions were not commanded by this colonel but from higher up. The trial was forced into narrow limits by delays, lies, minimal responses, the destruction of the log in the military academy, blockage on letters rogatory by the United States.

A final note. The coincidence of a truce between the rebels and the Government should not be read to mean that now the United States should feel free to continue its military aid. By no means. ■