INTERIM REPORT OF THE SPEAKER'S TASK FORCE ON EL SALVADOR

April 30, 1990

EMBARGOED UNTIL 11am, Monday, April 30
Congress of the United States
Washington, DC 20515

April 30, 1990

The Honorable Thomas S. Foley
The Speaker
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

We, the undersigned members of your Special Task Force on El Salvador, submit the following report for your review and consideration. Based on our information-gathering and deliberations, we all concur with the findings outlined in this report.

Sincerely,

John Joseph Moakley
Chairman

David E. Bonior
George W. Crockett, Jr.
Dan Glickman

Barbara B. Kennelly
Barbara Kennelly

Frank McCloskey

Lawrence J. Smith

John M. Spratt, Jr.

Gerry E. Studds
Members of the Speaker's Special Task Force on El Salvador

Joe Moakley (D-MA)  Chairman

David E. Bonior (D-MI)
George W. Crockett, Jr. (D-MI)
Dan Glickman (D-KS)
Lee H. Hamilton (D-IN)
Steny H. Hoyer (D-MD)
Barbara Kennelly (D-CT)
H. Martin Lancaster (D-NC)
Mel Levine (D-CA)
Frank McCloskey (D-IN)
Dave McCurdy (D-OK)
Jim McDermott (D-WA)
Matthew F. McHugh (D-NY)
George Miller (D-CA)
John P. Murtha (D-PA)
David E. Obey (D-WI)
Lawrence J. Smith (D-FL)
John M. Spratt, Jr. (D-SC)
Gerry E. Studds (D-MA)
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John P. Murtha (D-PA)
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John M. Sweeney, Jr. (D-SC)
Geoff E. Strage (D-MD)
Statement by Congressman Joe Moakley

I am deeply honored by your recognition and support. However, it is important to note that all the victories we have achieved on El Salvador this year could not have been possible without you.

It was a small group of area residents who first brought to my attention the plight of Salvadoran refugees -- way back in 1983. And, as you know, 1983 was the first year we filed the so-called Moakley-DeConcini bill to provide Salvadorans with temporary safe haven. We passed that bill 4 times in the U.S. House of Representatives by large margins, due -- in large part -- to the tremendous grassroots work of lawyers, activists, refugees and concerned citizens here in the Commonwealth of Massachusetts. And, just a couple of weeks ago, we succeeded in attaching the Moakley-DeConcini bill to the omnibus immigration bill -- and I expect any day that the President will sign it into law. We won -- and I couldn't have done it without you.

Nor could we have cut -- by 50 percent -- U.S. military assistance to El Salvador without you. For the first time since the United States became embroiled in the Salvadoran conflict, the U.S. Congress said no -- and that's because the American people said no. All of you who have struggled so long and hard for peace in El Salvador should pat yourself on the back because we are finally moving toward that goal. We are moving in the right direction because of the letters, the phone calls, the petitions, the seminars and the meetings that you have all organized. It worked.

Finally, I want to thank you for your support for my efforts in trying to bring about a just resolution to the Jesuits case. I always tell people that I am a bread and butter politician from South Boston who feels more comfortable talking about jobs than foreign policy. However, nothing has enraged me more than the brutal murders of those six holy men, their housekeeper and her young daughter -- and the Salvadoran military's blatant cover-up of these crimes. Those who pulled the trigger and committed this heinous crime included men trained with American money, by American servicemen, on American soil. We all must bear some responsibility for this crime -- in much the same way we must bear some responsibility for the war and the refugees that war has created.

So, I thank you for honoring me. But it is really I who should honor you for your commitment, your compassion and for your determination to bring peace to El Salvador and common sense to U.S. policy in the region.

Thank you.
INTRODUCTION

Early on the morning of November 16, 1989, six Jesuit priests, their cook, and her daughter, were brutally murdered at the University of Central America (UCA) in San Salvador, El Salvador.


Over the past four months, the Task Force has held a series of informal meetings and interviews with U.S. and Salvadoran officials and others with knowledge of the investigation of the Jesuits' case and related matters. From February 11-14, ten Members of the Task Force joined five Republican Members of the House in a visit to El Salvador. Staff delegations from the Task Force visited El Salvador in January and April. The Task Force is especially grateful to Salvadoran President Alfredo Cristiani, Jesuit Provincial Fr. Jose Maria Tojeira, UCA Rector Fr. Miguel Estrada, Archbishop Arturo Rivera y Damas, Army Chief of Staff Col. Rene Emilio Ponce, and U.S. Ambassador to El Salvador William Walker and his staff for their courtesy and cooperation during these visits.

Most of the information contained in this report was obtained during interviews or meetings involving Members or staff of the Task Force, or from documents provided to the Task Force by the Salvadoran government, the U.S. Departments of State and Defense or other sources. In some cases, the individuals providing information or making statements cited in the report are not specifically identified either out of concern for the safety of those individuals or because it was a condition of obtaining the information, or both.

It is important to emphasize that the mandate of the Task Force is to obtain information concerning the investigation into the Jesuits' case and related issues and to share that information
with the Speaker, other Members of the House and the public. Obviously, the Task Force does not, itself, have either the responsibility, or the capability, of carrying out its own investigation of the crimes.

Further, it is not the job of the Task Force to recommend specific changes in U.S. policy towards El Salvador or to examine the full range of issues that are relevant to that policy. For that reason, the Task Force does not examine the many crimes perpetrated by the extreme right or the FMLN in recent years. Although it is not part of our mandate to investigate the human rights abuses committed by the FMLN, the Task Force recognizes that the guerrillas have played an instrumental role in the violence that has afflicted Salvadoran society for the past decade. FMLN actions such as the assassination and attempted assassination of civilian political leaders (including attempts on the lives of President Cristiani and Vice-President Merino at the start of the November offensive), kidnappings, the use of mines, sabotage and the attempted disruption of elections have contributed greatly to El Salvador's misery.

Accordingly, the Task Force emphasizes that what is omitted from this report does not reflect a lack of concern on the part of Task Force members with these or other violations of human rights that have occurred in El Salvador, or with the larger policy issues that affect relations between our two countries. We urge those who read this Report to consider its findings, as we will, in the context of other information and other issues relevant to U.S. policy towards El Salvador.

As discussed below, the investigation into the murders at the University of Central America is not yet complete. In addition, the Task Force continues to seek information concerning a few recent cases that raise issues related to those in the Jesuits' case. These include allegations made by Cesar Vileman Joya Martinez, a deserter from the Salvadoran military, concerning the alleged operation of a death squad within the Salvadoran First Brigade during the 1988-89 period, and the murder in Guatemala in
January, 1990, of Salvadoran political leader Dr. Hector Cueli.
For that reason, this should be considered an interim, not a
final, report of the Task Force.

Of the government of El Salvador.

President Alfredo Charietti

According to General Marcial Evaristo Colorado

As Majority Leader of the Assembly, Report O. A.,

Leaders of the Armed Forces:

Gen. Minister of Defense, Gen. Rafael Humberto Lanza Lobo

Gen. Vice-Minister of Defense, Col. Juan Orlando Deras

Gen. Chief of Staff, Col. Rene Emilio Ponce

Gen. Commander Air Force, Gen. Rafael Accorito Villanueva

Gen. Chief of Personnel, Col. Rene Ivan Lopes v. Lopes

Gen. Chief of Psychological Operations, Col. Carlos Amando Aviles

University of Central America:

Dr. Ing. Mario Epps

Dr. Carmen Gross

Dr. Ing. Marino Martinez

Dr. Ing. Amando Lopes Quintanilla

Dr. Ing. Juan Ramon Moreno

Dr. Ing. Joaduin Lopes y Lopes

Mrs. Julia Mesa Ramos

Mrs. Celeste Martinez Ramos

Those currently under arrest:

Col. Guillermo Alfredo Benavides Morales

Lt. Colonel Rene Mendoza Villalobos

Lt. Colonel Evaristo Guerra

Lt. Colonel Guadalupe Cerritos

Sr. Antonio Raimundo Aviles Vargas

Sr. Thomaz Zambra Carriello

Col. Angel Perez Vassues
LIST OF KEY PERSONS MENTIONED IN REPORT

Officials of the Government of El Salvador:

o President, Alfredo Cristiani
o Attorney General, Mauricio Eduardo Colorado
o Majority Leader of the Assembly, Roberto D'Aubuisson

Leaders of the Armed Forces:

o Minister of Defense, Gen. Rafael Humberto Larios Lopez
o Vice-Minister of Defense, Col. Juan Orlando Zepeda
o Chief of Staff, Col. Rene Emilio Ponce
o Commander, Air Force, Gen. Rafael Antonio Villamariona
o Chief of Personnel, Col. Nelson Ivan Lopez y Lopez
o Chief of Psychological Operations, Col. Carlos Amando Aviles Buitrago

Victims of the Murders at the University of Central America:

o Dr. Ignacio Ellacuria
o Dr. Segundo Montes
o Dr. Ignacio Martin-Baro
o Dr. Amando Lopez Quintanilla
o Dr. Juan Ramon Moreno
o Dr. Joaquin Lopez y Lopez
o Mrs. Julia Elba Ramos
o Ms. Celia Marisette Ramos

Those currently under arrest:

Col. Guillermo Alfredo Benavides Morales
Lt. Yusshy Rene Mendoza Vallecillos
Lt. Jose Ricardo Espinosa Guerra
First. Lt. Gonzalo Guevara Cerritos
Sgt. Antonio Ramiro Avalos Vargas
Sgt. Thomas Zarpate Castillo
Cpl. Angel Perez Vasquez
Pvt. Oscar Mariano Amaya Grimaldi
Pvt. Jorge Alberto Sierra Ascencio (deserted)

Head of the Special Investigations Unit:

Lt. Col. Manuel Antonio Rivas Mejia

Judge, 4th District San Salvador:

Dr. Ricardo Zamora

Officials, U.S. Embassy, San Salvador:

Ambassador, William Walker
Deputy Chief of Mission, Jeffrey Dietrich
Head of Military Group, Col. Milton Menjivar
EXECUTIVE SUMMARY

Purpose. The central purpose of the Speaker's Special Task Force on El Salvador is to monitor the investigation by Salvadoran authorities into the murder of six Jesuit priests, their cook and her daughter, at the University of Central America (UCA) on November 16, 1989. The Task Force was also asked to consider issues related to those killings, including respect for human rights in El Salvador and the need for judicial reform.

General Findings. The most important general findings of the Task Force, to date, are that:

1. The murders of the Jesuits reflect problems within the Salvadoran armed forces that go far beyond the actions of a particular unit on a particular night. Major reforms within the military are necessary to make a recurrence of such crimes unlikely; to insulate the judicial process from military pressure; and to strengthen Salvadoran democracy.

2. A serious effort was made to identify those who actually killed the Jesuits and, for a time, good police work was done. These facts reflect an advance from the early 1980's in El Salvador when similar crimes would not even have been investigated. We attribute the progress to positive efforts by the civilian leaders of El Salvador and to an understanding on the part of some within the military that aid from the United States would be affected by its actions in this case.

3. Despite the good police work, those now charged with the crime might not have been arrested if an American military officer had not come forward in early January with information concerning the alleged involvement of Salvadoran Col. Alfredo Benavides in the case.

4. The investigators have made little effort to determine whether senior military officers other than Col. Benavides might have had a role in ordering, or in covering up, the crimes.
5. As of mid-April, the investigation and preparations for prosecuting the case have come to a virtual standstill. This is true both with respect to any investigation of possible senior officer involvement in the crimes, and to the gathering of further evidence against those already arrested. This lack of continued progress, coupled with certain aspects of Salvadoran law, make it less and less likely that full justice will be done.

Discussion. As of mid-April, when this report was prepared, the investigation in the Jesuits' case had led to the arrest or charging of 9 members of the Salvadoran armed forces, including Col. Benavides, commander of the Military School from which the operation that allegedly carried out the murders was launched. Col. Benavides and the others arrested are currently being held by the National Police and Treasury Police pending the completion of the investigative phase of the judicial process. Once that phase is complete, a decision will be made as to whether some or all of the prisoners should stand trial.

Evidence contributing to the arrests was gathered by the Special Investigations Unit (SIU), a U.S.-funded group of specially-trained military officers located within the Salvadoran Ministry of Justice. The second, more formal, investigatory phase is being conducted by Judge Ricardo Zamora, of the Fourth Circuit of San Salvador, with the assistance of the SIU.

There was widespread skepticism from the outset that a thorough inquiry into potential military involvement in the crimes would be attempted or allowed. There is evidence that the SIU investigators, themselves, were unsure what the consequences of alleging military involvement might be.

Despite these doubts, the Task Force believes that Salvadoran President Alfredo Cristiani has made a sincere effort to encourage a professional investigation into the murders, and that the SIU carried out its basic police work in a competent manner. Ballistics evidence, handwriting samples, and
discrepancies in the statements of those who allegedly committed the crimes were obtained and used as a basis for the arrests that were made. Both U.S. and Salvadoran officials have told the Task Force that this "good police work" was solely responsible for the arrests. The Task Force believes that other factors may have also played a part.

On January 2, an American military officer assigned to the U.S. Embassy came forward with information indicating that Col. Benavides had told the head of the SIU not long after the murders occurred that he was responsible for the crimes. Embassy officials immediately confronted the Salvadoran High Command with the information, and five days later the Salvadoran government announced for the first time that the military had murdered the priests. As a result, the Task Force believes that although "good police work" was important, it may have been the American officer's decision to come forward that actually precipitated the arrests.

Although the Task Force was pleased with some aspects of the SIU investigation, we were very disappointed by its failure to investigate seriously the possibility that military officers senior to Col. Benavides may have ordered or otherwise had prior knowledge of the crimes. That disappointment extends, as well, to the efforts made by Judge Zamora subsequent to the arrests.

Even today, a series of questions about the possible involvement of higher officials in ordering the crimes remain unanswered and, as far as can be determined, unasked. The investigators have not questioned senior officials about a meeting of the Armed Forces High Command, at which Col. Benavides was present, on the night of the murders; they have not questioned them about other conversations they might have had with Col. Benavides shortly before, during or shortly after the night on which the murders were committed; they have not questioned them about the reasons for the assignment and re-assignment of the commando unit that
allegedly carried out the murders; they have not investigated a radio call that was made while the meeting of the High Command was going on and that apparently set the murders in motion; they have not investigated the presence of a military intelligence officer during a search of the UCA two and a half days before the murders took place; and they have not questioned military officials about their possible involvement in withholding information or attempting to cover up the crimes.

The Task Force is particularly disturbed by the failure of the investigation to make significant progress in any area since the arrests were made in January. Judge Zamora has only met with SIU investigators once to coordinate further efforts to gather information. Numerous suggestions for interviewing potential witnesses have not been acted on by either the Judge or the SIU. Now, there is a possibility that Judge Zamora will be replaced by a new judge, resulting in additional delay. Meanwhile, legal experts are concerned that Col. Benavides will benefit from certain provisions of Salvadoran law that render inadmissible the testimony of co-participants in a murder. Given the lack of on-going efforts to gather new evidence against him, Col. Benavides may not even stand trial.

During its inquiry, the Task Force was asked repeatedly by U.S. and Salvadoran officials to view the murder of the Jesuits as a crime committed by individuals, and not an indictment of the armed forces as an institution. Unfortunately, the Task Force believes it is both.

We believe that the murder of the Jesuits grew out of an attitude of suspicion and anger towards activist segments of the church that remains all too widespread within the armed forces and certain other sectors of Salvadoran society. Because of this attitude, too little effort is made to distinguish between those who use non-violent methods to advocate or achieve change, and guerrillas who take up arms against the government.

During its visit to El Salvador, Task Force members heard the
murders of the Jesuits described by high military officials as 
"stupid", "self-defeating", and "dumb". But no senior military 
official with whom we talked said it was wrong. This lack of 
outrage or moral condemnation is further illustrated by the 
treatment of Col. Benavides since his arrest, reportedly 
including one or more trips to an Army-owned vacation facility on 
El Salvador's southern coast.

The Task Force is concerned, as well, by the failure of 
individuals within the military to come forward with information 
concerning the murders. Literally hundreds of military personnel 
were deployed in the area around the University on the night of 
the crime. There are allegations that some in military 
intelligence may have witnessed the crime and reported their 
knowledge to superior officers. And other military personnel may 
have been told of the murders by the 45-50 soldiers who actually 
participated in the operation.

Despite this, not one member of the Salvadoran armed forces has 
voluntarily provided information of real value, for the record, 
in this case. Even the head of the SIU, Lt. Col. Manuel Antonio 
Rivas Mejia, has refused to give a formal statement concerning 
the allegation that Col. Benavides confessed to him his guilt.

The institutional nature of the problems in El Salvador is 
demonstrated, as well, by the fact that the Jesuits case 
reflects the Salvadoran justice system at its best, not its 
worst. This is one of a handful of the human rights cases in El 
Salvador over the past decade that has received enough 
international attention to be taken seriously by Salvadoran 
authorities. Thousands of other crimes, some perpetrated by the 
FMLN, some by the military, some by forces unknown, have not even 
been investigated. Despite a decade of promises, tens of 
millions of dollars in U.S. aid and repeated statements that 
progress is just around the corner, the Salvadoran justice system 
remains essentially an oxymoron—neither systematic, nor just.

The Task Force is also concerned by the continued abuse of human
rights by military forces in El Salvador despite receiving hundreds of millions of dollars in U.S. aid and training over the past decade. All of the soldiers charged with murdering the Jesuits, except Col. Benavides, received at least some U.S. training, including four who received training in the United States. Sadly, the entire unit that allegedly carried out the crimes was participating in a U.S. training exercise during the two days immediately prior to the murders.

Finally, the Task Force is disturbed by the reluctance of the leadership of the armed forces to accept the need for change. The murder of the Jesuits was a symptom of a too-frequent failure within the military to accept civilian authority and to pattern its own actions on the requirements of law. Progress within the armed forces is hampered by its continued allegiance to the so-called "tanda" system, which places seniority above ability in promotions, and loyalty to a classmate above loyalty to law. As a result, some officers are kept in key jobs despite being perceived by those both within and outside the armed forces as corrupt, incompetent or criminal.

Despite our strong feelings about the need for military reform, the Task Force does not wish this report to be read as a criticism of all members of the armed forces of El Salvador. On the contrary, the Task Force recognizes that there are many officers and enlisted men and women in the Salvadoran military who carry out their duties in a professional and responsible manner.

Next Steps. It is not the responsibility of this Task Force to make specific recommendations governing U.S. policy towards El Salvador. Those judgments require a broader focus than that dealt with in our deliberations or in this report. Nor is it our responsibility to make policy recommendations to the government of El Salvador. It is our hope, nonetheless that:

- those arrested in the Jesuits case will be prosecuted and, if found guilty, punished in accordance with the serious nature of
the crimes;

- the investigation will continue and the focus will be broadened both to establish the strongest possible case against those arrested and to examine the possibility that officers senior to Col. Benavides or others may have ordered or otherwise participated in the crimes;

- serious efforts will be made to increase civilian control over the armed forces, resulting in the removal of incompetent, corrupt or criminal officers; the replacement of the present "tanda" system with a promotion system based on merit; and the establishment of independent, civilian-controlled police and criminal investigative forces;

- renewed efforts will be made to institute judicial reform, including increased training, recruitment and protection of judges; and

- serious negotiations for a peaceful settlement to the war will proceed.
BACKGROUND

The brutal murder in San Salvador on November 16, 1989 of six Jesuit priests, their cook and her daughter, did not occur in isolation. To military leaders, the Jesuit fathers had long been figures of suspicion. They were thought to be, in the words of Deputy Minister of Defense, Col. Orlando Zepeda, "advisers to the FMLN", and their university "a center of information inclined to the left where a certain concept of the revolutionary struggle began."

Of those killed on November 16, the most prominent was the UCA's rector, Father Ignacio Ellacuría. Fr. Ellacuría was considered to be one of the leading intellectual and political thinkers in El Salvador. His teachings had influenced the lives of many younger Salvadorans, including some who had become leaders of the FMLN, and others who had joined the armed forces.

In the months prior to his death, Fr. Ellacuría became deeply involved in efforts to initiate and sustain serious peace negotiations between the Salvadoran Government and the leaders of the FMLN. In so doing, he traveled on several occasions to Managua to talk to the FMLN. According to U.S. officials, these visits were viewed by at least some military officers as the actions not of a man interested in promoting peace, but of an adviser to terrorists. They felt this way despite the fact that Ellacuría had become increasingly critical of the FMLN.

Father Ellacuría's effort to promote a dialogue was dealt a series of blows during the late fall of 1989. Meetings between the government and FMLN in Mexico City in September, and in San Jose in October, produced some optimism but no real progress. The optimism evaporated quickly, however, following an outbreak of the kind of tit-for-tat terrorism that has plagued El Salvador for years. The FMLN murdered the daughter of Salvadoran Col.
Oscar Casanova Vejar. Someone, presumably from the right, bombed the house of opposition political leader Ruben Zamora. The FMLN attacked the houses of relatives of several senior military officers. And finally, the headquarters of the leftist labor confederation FENESTRAS was bombed, killing nine. In the midst of this, the FMLN withdrew from the negotiations and--on November 11--launched the fiercest offensive of the war.

The murders of the Jesuits occurred on the fifth night of that offensive, at a time when the outcome of the fighting was far from clear. The FMLN had established and was holding positions throughout the northern and eastern part of the area around San Salvador, in neighborhoods that included San Sebastian, Soyapango, Zacamil, Cuidad Delgado and Mejicanos.

On November 11, the night the offensive began, a government-run radio network began broadcasting threats, apparently from radio listeners, that were directed by name at persons they associated with the political left. Those threatened included Fr. Ellacuria and another of those murdered on the 16th, Fr. Segundo Montes.

That same night, a group of guerrillas fled through the UCA grounds after setting off a bomb at the gate to force it open.

Two days later, according to Colonel Ponce, the military received information that mortars and machine guns were being fired from the UCA. Acting under guidelines instituted by President Cristiani that required a specific authorization from the High Command before the military could enter the UCA, a unit of the Atlacatl Battalion went to the university for the purpose of determining whether the reports were accurate. Before entering the UCA, the unit was joined by Lt. Hector Ulises Cuenca Ocampo of military intelligence (DNI). The unit was escorted during its search by Fathers Ellacuria and Segundo Montes, checking classrooms and the living quarters of the priests. No evidence of mortars or machine guns was found.

The unit of the Atlacatl that conducted the search had arrived in
the area at 4:00 p.m. on the afternoon of the 13th. It was one of several units that had been assigned to the command of Col. Alfredo Benavides, director of the Salvadoran Military School. The mission of these units—which were drawn not only from the Atlacatl, but also from the Treasury Police, National Police and various Army detachments—was to defend what Col. Ponce termed "the military head of the country." The sector included the headquarters of the General Staff, the Ministry of Defense, the Intelligence School, and the homes of senior military officials, as well as the Military School and the UCA. As a result, the area around the UCA and the military complex was one of the most heavily guarded in the city.

Salvadoran military leaders told the Task Force that the commando unit of the Atlacatl Battalion, led by Lt. Jose Ricardo Espinosa Guerra, was one of the best and most experienced units in the Salvadoran armed forces. Lt. Espinosa and Lt. Guevara Cerritos, his second in command, were both graduates of the Salvadoran Cadet Preparation Course given at Fort Benning, Georgia, and Lt. Espinosa had also attended the Special Forces Officer's Course at Fort Bragg. Sgt. Antonio Ramiro Avalos Vargas and Cpl. Angel Perez Vasquez had also received training at Fort Benning. A scheduled ten day special forces training course for the entire unit, which had begun on November 11, was interrupted after two days by the guerrilla offensive. (Note: the American Green Beret unit that was conducting this training course spent a day barricaded in the San Salvador Sheraton as the result of an FMLN attack soon thereafter).

On November 15th, the High Command met, as it had every night since shortly before the offensive began. That night, the meeting began around 7:30 p.m. Those present included the Minister and two Vice-Ministers of Defense; the Chief of Staff, Colonel Ponce; the heads of the joint commands; the commanders of the various security forces; the commanders of units in the metropolitan area, including Col. Benavides; and a press officer.

According to those who attended the meeting and with whom the
Task Force spoke, the mood was grim. There was a real fear that the guerrillas’ effort to spark a popular insurrection might succeed.

From the beginning of the offensive, there had been concern about the difficulty of dislodging the guerrillas from areas where large numbers of civilians lived. As a result, an effort had been made to encourage the civilian population to leave the conflictive areas. Now, the decision was made to use heavy airpower against FMLN-held positions. Area commanders were instructed to locate and take action against guerrilla command centers in their sectors. Minister of Defense Larios, among others, gave what amounted to a "pep talk", and urged those present to fight back hard. The meeting ended with joined hands and a prayer for God's help. Around 10:30 p.m., President Cristiani was asked to come to the High Command where he personally authorized the selective use of air and artillery power. The meeting broke up around 11:00 p.m.

THE MURDERS

The following account of the murders and surrounding events is taken primarily from the testimonies given by those who participated in the events, as published in the proceedings of the Fourth Criminal Court of San Salvador on January 18, 1990. These testimonies were used as a basis for the arrests that have been made in the case. The Task Force notes that no statement from Col. Benavides was published and that he has not publicly admitted any responsibility or guilt.

According to the testimonies, Col. Benavides arrived at the military school shortly after the meeting of the High Command ended at 11:00 p.m. There, he met in his office with Lt. Yusshy Mendoza Vallecillos (assigned to the military school), Lt. Espinosa and First Lt. Guevara Cerritos, both of the Atlacatl. About 45 minutes earlier, Lt. Espinosa had been given an order by radio to assemble his troops at the military school.
Now, Col. Benavides told the lieutenants that, "this is a situation where it's them or us; we're going to begin with the ringleaders. Within our sector, we have the university and Ellacuria is there."

Turning to Lt. Espinosa, he continued:

"You conducted the search and your people know the place. Use the same tactics as on the day of the search and eliminate him. And I want no witnesses. Lt. Mendoza will go with you as the man in charge of the operation so that there will be no problems."

The lieutenants left Col. Benavides' office and mustered their men into two beige Ford vans for transportation to the UCA, where they would link up with other patrols from the Atlacatl. Before leaving, Lt. Mendoza asked if any of the men knew how to use an AK-47, which is a weapon sometimes used by the FMLN.

An enlisted man, Oscar Mariano Amaya Grimaldi, said that he knew how to use the weapon, and the group was delayed for approximately ten minutes while he cleaned it. Amaya was told by Lt. Espinosa that the purpose of the mission upon which they were about to embark was to kill "some terrorists who were inside the UCA."

Not long after midnight, as many soldiers as could fit into the two vans (20-25) drove to some empty apartment buildings located on the west side of the UCA where they met up with two Atlacatl patrol units that Lt. Espinosa had instructed to take up positions near the UCA earlier in the evening.

Now, Lt. Espinosa told the patrol leaders that they had been given an order "from above" to eliminate the intellectual leaders of the guerrillas, who were inside the UCA. He said that at the moment of withdrawal there would be a flare and later a simulation of a confrontation would take place. It was around 1:00 a.m. when the entire group of 45-50 moved towards the university.
After soldiers began banging on the doors, one of the Jesuit fathers emerged, went to the front gate and let some of the soldiers inside.

Soon afterwards, Fr. Martin Baro went with a soldier to open the other gate. Not far away, in a small house bordering the Jesuit property, a young woman who did cleaning for the Jesuits was sleeping with her husband and young daughter when she was awakened by the noise. The woman, Mrs. Lucia Cerna, says she heard Fr. Baro say to the soldier, "This is an injustice. You are scum."

Five of the priests were gathered on a small plateau of land just above the backyard entrance to the living quarters. The five were instructed to lie face down. Lt. Espinosa inquired of Sub. Sgt. Antonio Avalos when he was going to proceed. Avalos interpreted this as an order to kill the priests. Accordingly, Avalos approached Amaya Grimaldi (the soldier with the AK-47) and said to him:

"Let's proceed."


While this was going on, another soldier, Tomas Zarpate "was providing security" for the Jesuits' cook, Mrs. Elba Julia Ramos, and her 15 year old daughter Marisela who had been discovered by the soldiers in a guest room at the far end of the building where the Jesuits lived. On hearing the voice ordering: "Now," and the ensuing shots, Zarpate shot the two women.

It was at this moment, immediately after the shooting, that a sixth priest, Fr. Lopez y Lopez, appeared in the door of the residence. The soldiers called to him and he responded:

"Don't kill me because I don't belong to any organization."
He then went back inside the house, where he was pursued by a soldier -- still unidentified -- and shot. Another soldier, Perez Vasquez, was leaving the building when he felt Fr. Lopez's hand grabbing for his ankle. Perez Vasquez shot him four times.

While leaving, Avalos Vargas -- nick-named "Toad" and "Satan" by his comrades -- passed in front of the guest room where the two women had been shot and heard them moaning in the darkness. He lit a match and saw the two women on the floor embracing each other. He then ordered a soldier, Jorge Alberto Sierra Ascencio, to "re-kill" them. Sierra Ascencio shot the women about ten times, until they stopped moaning. (Sierra Ascencio deserted the Army in late December. His whereabouts are not currently known).

Their grim mission accomplished, the soldiers, as ordered, shot off a flare as a signal for the unit to withdraw.

The soldiers then feigned a firefight, using an M-60 machine gun, an anti-tank rocket, the AK-47 and other weapons. As they left, one of them turned a sign around on the pedestrian gate to the UCA and wrote, "The FMLN executed the enemy spies. Victory or Death, FMLN."

In his testimony, Lt. Mendoza said that he saw a soldier, whose identity he did not know, carrying a light brown valise. The Jesuits believe that the valise contained $5,000 which had been given to Fr. Ellacuria a few days earlier in recognition of his work on human rights.

The unit then proceeded back to the Military School where the lieutenants, after some effort, were able to locate Col. Benavides. Lt. Espinosa said "My Colonel, I did not like what was done."

Benavides told him to "calm down, don't worry. You have my support. Trust me."

"I hope so, my Colonel," Espinosa replied.
At approximately 5:00 or 6:00 a.m., the unit left the Military School, pursuant to orders from the High Command, to re-join the main part of the Atlatl Battalion in the northern part of the city near the First Brigade.

THE INVESTIGATION--THE TECHNICAL SIDE

The bodies were discovered at approximately 7:00 a.m., after the curfew ended, by the father and husband of the two murdered women.

At 8:30 a.m., the Special Investigations Unit (SIU), under the direction of Lt. Col. Rivas, arrived at the murder scene. Although the site had already been disturbed by Jesuits, neighbors, the press and others, the SIU began the process of gathering physical evidence, taking photographs, preparing maps and interviewing potential witnesses. Neighbors confirmed the sound of gunfire and explosions during the night, but no one claimed to have seen the murders take place.

On November 22, six days after the killings, the first acknowledged eyewitness, Mrs. Lucia Cerna, testified at the Embassy of Spain that she had seen uniformed men and heard shots near the scene of the murders during the early morning hours of November 16. Her testimony there and in subsequent interviews is discussed below in the section entitled, "the witness".

From the beginning, the SIU focused on three possible suspects: the FMLN, the armed forces, and a death squad, which might or might not have included military personnel, acting on the instructions of someone on the extreme right.

Other than the sign left at the premises, the use of an AK-47, and the attempt to feign a firefight, the SIU uncovered no evidence indicating involvement of the FMLN.

Speculation about the possible involvement of ARENA party leader Roberto D'Aubuisson increased when a report appeared in Newsweek
magazine, ascribed to "U.S. intelligence sources", saying that D'Aubuisson had said at a meeting the day before the crimes that "the Jesuits must go". However, no supporting evidence that such a meeting took place has come to light and D'Aubuisson subsequently denied making the statement.

The investigation of possible military involvement began slowly. According to the SIU's own chronology, it was not until December 5th, almost three weeks after the murders, that the SIU asked the High Command for a list of those who carried out the search of the UCA on November 13 and not until December 11 that the list was received. It was not until December 7 that a request was made for confirmation as to whether the types of ammunition found at the scene were used by the military. And it was not until December 11, almost four weeks after the murders, that a request was made for a list of the military personnel assigned to the area around the UCA on the night of the crimes.

By late December, however, the SIU had taken 385 ballistics samples and 385 sets of fingerprints from soldiers assigned to the area of the UCA on the night of the murders, including 45 from members of the Atlacatl unit that actually perpetrated the crimes. In addition, 14 people had been polygraphed, 11 of whom were military officers, and 86 depositions from military personnel had been taken.

In the course of taking statements, the SIU noticed that discrepancies had begun to emerge in statements made by members of the Atlacatl unit. While describing their participation in the search that had been authorized on November 13th, some soldiers made reference to conditions--such as the lack of electricity--which had existed on the 15th. Suspicions were also aroused when Lt. Espinosa managed to frustrate three efforts to polygraph him, citing each time a different excuse.

On December 28, according to Lt. Col. Rivas, his ballistics experts noted some similarities between cartridges found at the UCA and those belonging to members of the Atlacatl. A decision
was made to run new tests using a burst of fire rather than single shots. The results of those tests became available on January 5, and showed a match between the AK-47 used to commit some of the murders and one of four AK-47's belonging to the Military School. No match was established, however, for the M-16's that were used to kill the other Jesuits and the two women.

On January 7, President Cristiani announced on national television that the investigation now indicated that the armed forces had been responsible for the murders. He also ordered that 45 members of the Atlacatl, and Col. Benavides and Lt. Mendoza of the Military School, be held for questioning. The next day, it was announced that a special military honor board would begin questioning those who had been held.

THE WITNESS

There has been much controversy surrounding the testimony of Mrs. Lucia Barrera de Cerna—the first witness to come forward with information on the Jesuit murders—and her treatment by those who interrogated her.

Summary of the Facts. In brief, Mrs. Cerna's testimony is that at approximately 1:00 am on the morning of the murders, November 16, she was awakened by gunfire and saw five men, some of them dressed in camouflage uniforms, standing at the main entrance gate that led to the residence of the Jesuits. She heard more gunfire and the voice of Father Ignacio Martin-Baro shouting the words, "This is an injustice...you are scum"; and then more gunfire. According to her testimony, she did not see the actual murders take place, and she could not identify the faces of the men at the gate or the insignias on their uniforms. Members of the Task Force who traveled to El Salvador attempted to retrace Mrs. Cerna's steps the night of the murders in accordance with her testimony and, in our judgment, there is no question that she could have seen and heard what she said she saw and heard that night.
On November 23, after making a declaration to the investigating judge, Mrs. Cerna and her family agreed to arrangements made by the Spanish and French Ambassadors to go to Miami and stay with Jesuits there. Ambassador Walker, upon learning of the arrangements, asked the French Ambassador to allow representatives from the United States Embassy and the FBI to be present on the plane, which was a French military aircraft. According to Embassy officials, the purpose of this request was to "facilitate a smooth entry into the United States". There was no mention made to the Cerna family or to the Jesuits in San Salvador that the Cernas would be interrogated further in Miami.

Once in Miami, the Cernas were under the care of the U.S. Department of State. Between November 27 and December 3, they were interrogated at length by two agents of the F.B.I. and by the head of the Salvadoran SIU, Lt. Col. Rivas. The only other person present during the questioning was the legal officer from the U.S. Embassy in San Salvador. The Cernas were not asked if they wanted to have an attorney, a member of the Jesuit community, or some other trusted person with them during the lengthy interrogations.

Mrs. Cerna told the Task Force that she ultimately changed her story because she felt that the interrogators did not believe her original one. She said, "I felt pressured...they scared me, and I have hypertension and I am very excitable." She said that at one point an F.B.I. agent quickly turned toward her, changed his line of questioning, and asked, "This Estrada (the new rector of the UCA), is he or isn't he a guerrilla?" Mrs. Cerna answered that he was not. However, she said that her interrogators continued to ask the same questions over and over, and "then I became scared of these men. I didn't have any confidence anymore. And then I said, no sir. I don't know anything. Don't ask me any more questions. I don't know anything." Ultimately, both Mrs. Cerna and her husband, Jorge Cerna, were subjected to a series of polygraph tests in which deception on their part was indicated.

Word of the interrogations quickly spread to El Salvador. Salvadoran President Cristiani said in a press interview that Mrs. Cerna had changed her story and that she had failed several polygraph tests.
The Salvadoran Attorney General issued a statement saying that Mrs. Cerna was now a "very unreliable witness."

Members of the Jesuit order and the Catholic Church hierarchy in El Salvador were furious. They said they felt betrayed and deceived by the actions of the United States government. On December 10, Archbishop Rivera y Damas publicly accused the State Department of "brainwashing" Mrs. Cerna and of subjecting her to "aggressive and violent interrogation." On December 12, Father J.M. Tojeira, the Jesuit Provincial for Central America, issued a public communique which stated:

"...At times we have even been deceived with regard to certain aspects of the investigation. The clearest instance of this is in the way in which the witness, Lucia Barrera de Cerna, has been manipulated by the United States.

In effect, the U.S. Embassy made a commitment to accompany the witness to Miami and to hand her over there to the priests of the Society of Jesus. Instead, the witness was handed over to U.S. police agents for 8 days under the pretext of watching out for her security and with no attention to the wishes which had been expressed here."

In an effort to arrive at the truth concerning these allegations, the Task Force asked the F.B.I. to allow Members to question the two agents who interrogated the Cernas, and to provide copies of the transcripts of those interviews. Although these requests were refused, the F.B.I. did provide a number of documents, including the transcripts of the interviews, to the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee. In addition, Chairman Moakley received a copy of a letter, dated March 12, from F.B.I. Director William Sessions to Reverend Patrick J. Burns, S.J., President, Jesuit Conference, which explains the F.B.I.'s view of the interrogation of the Cernas.
The letter states:

"During the course of the FBI's contacts with the Cerna family, they were treated in a courteous and professional manner. ...All interviews and polygraph examinations were consistent with our procedures for direct contact interviews and were conducted in a professional manner. Throughout the several interviews, great care was taken to ensure that the witnesses were comfortable with the interview process and the office environment. ...All of the witness interviews were limited to normal business hours. Additionally, FBI personnel took the Cerna family to sightsee various parts of Miami or to visit Jesuit acquaintances during extended lunch breaks or on weekends."

Of particular concern to me were the allegations of witness mistreatment through "abusive incommunicado interrogation" by Special Agents of the FBI. Our inquiry determined these allegations to be totally without factual support and are in complete contradiction to the actual treatment afforded the Cerna family."

Ambassador Walker has stated that the purpose of the further questioning of Mrs. Cerna in Miami was to obtain additional information that might be useful during future legal proceedings on the case. The presence of Lt. Col. Rivas, in his view, was appropriate because Rivas was the chief investigator. Ambassador Walker says that Mrs. Cerna was polygraphed only after having provided three differing versions of what she had observed the evening the crimes occurred, but that Mrs. Cerna's failure to pass the polygraph tests does not mean that she is lying. He said that the witness may have been nervous and all that can be concluded is that it is not clear which version of events she offered is the most accurate.

Discussion and Findings. In view of the conflicting statements that have been made, and because we were unable to review the tapes and other relevant material concerning the treatment of the Cerna family, it is impossible for us to resolve fully the discrepancies in the
various accounts of what happened in Miami. However, it is reasonable to believe that Mrs. Cerna, a cleaning woman with hypertension, a limited education, and no experience with airplane trips, big hotels, murder investigations, or the United States, was scared and nervous during her ordeal. This alone may explain the differing accounts she gave of what she did and did not observe. Given the fact that she was not a criminal suspect and given the grisly nature of the crime she was testifying about, it is disturbing that she was interrogated for so long, and especially that she and her husband were subjected to polygraph examinations, without being offered access to an attorney.

The Task Force also believes that U.S. officials should have informed Mrs. Cerna and the Jesuits in San Salvador of exactly what they wanted to do in Miami and asked for their cooperation. There was no reason to believe that Mrs. Cerna would not cooperate. She, in fact, voluntarily cooperated with Salvadoran authorities and provided a statement to the judge; she did her duty. One regrettable result of this affair is that witnesses in this or other human rights cases in El Salvador may be less likely to come forward or to accept assurances of protection from the United States.

While the Task Force believes that U.S. officials should have acted with greater sensitivity, we do not have a basis for concluding that their actions were abusive or part of a conscious plan to discredit Mrs. Cerna's testimony. Given the limited nature of what Mrs. Cerna actually saw on the night of the murders, there would have been no motive, even under the most cynical of circumstances, for the U.S. Embassy or others to have sought to discredit her statement. The fact that Mrs. Cerna never claimed to be able to identify the military unit or individuals involved in the crimes is one of the ironies of this whole controversy.

COL. AVILES AND THE AMERICAN MAJOR.

Background. Throughout the early part of December, a tense relationship existed between the Jesuits at the UCA and Army
investigators. That relationship was gravely complicated by hard feelings over the alleged mistreatment of Mrs. Cerna. On December 19th, the investigators attempted to ease the situation by arranging a meeting between two Jesuit leaders, Fr. Tojeira and Fr. Estrada, and the Army Chief of Staff, Colonel Ponce. Col. Carlos Aviles, a Jesuit-educated officer who was well-connected to the Jesuits and a former head of the SIU, also participated in the meeting.

As a result of the meeting, the SIU held a full briefing for the Jesuit leaders on December 22 to report on the progress of the investigation. According to Lt. Col. Rivas, a spirit of full cooperation between the Jesuits and the SIU emerged after the briefing had taken place.

At about this same time, but before the SIU's briefing of the Jesuits, a conversation is alleged to have taken place between Col. Aviles and an American Major assigned to the military group at the Embassy.

The Major's Account. The following account is based primarily on the sworn statement of the American Major that was provided to the Salvadoran High Command on January 3, 1990 and an interview conducted by some Members of the Task Force with the Major on March 22. In deference to a request from the U.S. Department of Defense, the name of the Major is not cited in this account.

Col. Aviles and the American Major worked together closely. Their joint task, among other things, was to improve the image of the Salvadoran armed forces and demoralize the guerrilla opposition. In both respects, the murder of the Jesuits, and the accompanying suspicion of military involvement, was a serious problem.

The two discussed the case frequently. But according to the Major, on or about December 20th, Col. Aviles said something that went far beyond their earlier talks.

According to the Major, Col. Aviles said he had something to say that should be used on, in his words, a "break-in-case-of-emergency" basis. The Major interpreted this to
mean that the information should only be used if something were to happen to Col. Aviles and the investigation were not going forward as it should.

Col. Aviles said that his information was based on a conversation that he had had with Col. Lopez y Lopez, a friend and—like Col. Aviles—a former head of the SIU. In early December, Col. Lopez y Lopez had been assigned to assist Lt. Col. Rivas in the Jesuits' case.

According to Col. Aviles, Col. Benavides had approached Lt. Col. Rivas about the time the investigation started and said something to the effect of "I did it... what can you do to help me... what can we do about this?"

The American Major asked Col. Aviles, "What do you mean? Did Benavides kill the Jesuits?"

The answer was, no, a special operations group from the Atlacatl Battalion, headed by a lieutenant, had done the killing. But the Major understood Col. Aviles to be saying that the lieutenant had been acting under orders from Col. Benavides.

The Major asked "Who else knows? (Colonel) Ponce?" Col. Aviles said he did not know. He thought Col. Ponce had been told by Lt. Col. Rivas or Col. Lopez y Lopez, but was not sure.

The Major asked why an arrest had not been made. The answer was that Col. Benavides could not be arrested until the investigation had been completed.

According to Col. Aviles, SIU director Rivas was scared after his conversation with Col. Benavides. As a result, the investigation slowed. This prompted Col. Lopez y Lopez to initiate a conversation with Lt. Col. Rivas during which Rivas cited his discussion with Col. Benavides. Col. Lopez y Lopez subsequently passed on the information to Col. Aviles who then told the American Major.
During the next ten days, the Major shared the substance of his conversation with two individuals on the same "break-in-case-of-emergency" basis that Col. Aviles had used to convey the information to him. But he did not tell his superiors in the embassy.

According to the Major, there were three reasons he did not come forward immediately. First, he felt a strong sense of loyalty to Col. Aviles, who had requested his silence. Second, he believed that the Salvadorans were committed to finding and prosecuting those involved in the crimes. Those in charge of the investigation already had this information, so there may have been no need to tell anyone else. The Salvadorans had the responsibility to follow up on this information and he believed that they would. Finally, he felt it would be better for the Salvadoran armed forces if it was clear that they had solved the case on their own.

According to the Major, he and Col. Aviles continued to discuss the case. The Major was told that the investigation was going well; that a lieutenant from the Atlacatl was having trouble with his polygraph tests and kept making excuses about it; that the cartridges found at the scene were starting to show similarities to those fired from weapons belonging to the Atlacatl; and that there were some discrepancies in other testimonies given by members of the commando unit.

Despite this, the Major was concerned that no arrests had been made. He was troubled that when the Jesuits were officially briefed on the case on December 22nd, they were not told about the conversation between Col. Benavides and Lt. Col. Rivas. The Major asked again who in the Salvadoran leadership knew about that conversation, and Col. Aviles told him again that he did not know who knew.

On January 2, the Major finally told his immediate superior, Colonel William Hunter, about his conversation with Col. Aviles. Col. Hunter immediately told the head of the Military group, Col.
Milton Menjivar.

Without notifying either the Ambassador or the Deputy Chief of Mission, Col. Menjivar immediately went with a political officer from the Embassy to Colonel Ponce's office at the High Command. According to Col. Menjivar, Col. Ponce reacted first with disbelief, then with disappointment and finally with anger. He asked Col. Menjivar the source of the allegation, and Col. Menjivar told him about the conversation between Col. Aviles and the American Major.

Col. Aviles and the Major were summoned, and a meeting was held in Col. Ponce's office. At that meeting, Col. Ponce summarized the allegations and asked Col. Aviles to respond. Col. Aviles admitted discussing the case with the Major, but denied telling him about any conversation between Col. Benavides and Lt. Col. Rivas. At one point, Col. Aviles said, "if I knew this information, why would I risk my career by telling (the Major)?"

The Major then told his story again, after which Col. Ponce dismissed the meeting.

The next day, Col. Menjivar briefed the Salvadoran High Command on the allegations and the Deputy Chief of Mission at the U.S. Embassy, Jeffrey Dietrich, did the same in a meeting with President Cristiani. The American Major wrote a sworn statement that was submitted, along with a cover letter from Col. Menjivar, to Defense Minister Larios and the High Command.

Also on that day, an American Embassy officer informed Lt. Col. Rivas of the American Major's allegations. Lt. Col. Rivas denied having any conversation with Col. Benavides in which Col. Benavides admitted guilt, a denial which Lt. Col. Rivas subsequently repeated to Members of the Task Force. Col. Lopez y Lopez also denied having a conversation either with Lt. Col. Rivas or with Col. Aviles of the nature described in the American Major's account.
On January 5, the Major took a polygraph examination administered by the FBI. At about the same time, Col. Aviles took a polygraph test administered by Salvadoran authorities. The polygraph results indicated some deception in both cases.

On January 6, the Major left for the United States where he has taken additional polygraph examinations. The Task Force understands that these tests have not resolved the issues raised in the first exam.

The next day, President Cristiani announced that the investigation had concluded that the Armed Forces were responsible, and Col. Benavides and the others were arrested shortly thereafter.

Col. Aviles' Account. The Task Force did not have an opportunity to discuss this affair with Col. Aviles until April 20, during a visit by a staff delegation to San Salvador. On that date, Col. Aviles described this entire incident as a "nightmare" that has had a serious effect on his family and his professional career. He said he was shocked that the American Major had made the allegations, and that the only information he had provided to the Major about the case was that investigators were focusing on the FMLN, the armed forces and a rightwing death squad as possible culprits. He regretted that the affair has become "politicized", and said that he feared most Americans would almost certainly take the word of an American officer against the word of a Salvadoran.

When asked why the American Major might have made up such a story, Col. Aviles said "I wish I had a crystal ball that would help me learn the answer."

Both Col. Aviles and other senior Salvadoran military officials with whom the Task Force spoke denied published reports that Col. Aviles had ever been "arrested" or "detained" as a result of this incident.
Discussion and Findings. If the story of the American Major is accurate, and if what Col. Aviles said to the American Major was also true, the entire investigation of the Jesuits' case appears in a different light. It means, for example that:

- Lt. Col. Rivas, the head of the SIU, was aware from the early stages in the investigation that Col. Benavides and the Atlacatl were involved in the murders;

- Col. Benavides, a senior military officer of the same rank and class as those in the leading positions within the Salvadoran military, approached Lt. Col. Rivas, soon after the crimes, to seek assurance that he would be protected;

- the investigators, Lt. Col. Rivas and Col. Lopez y Lopez, and former investigator Col. Aviles, may have been uncertain whether they had enough support within the armed forces and the Salvadoran government to accuse Col. Benavides;

- notwithstanding these doubts, the investigators continued to gather evidence that was tending, more and more as the days went by, to implicate the commando unit of the Atlacatl;

- Lt. Col. Rivas is perhaps the strongest potential witness in the case against Col. Benavides; and

- the timing of events is such that it is not clear whether the case ever would have broken if the American Major did not come forward.

The Task Force believes that the American Major is telling the truth. It is simply not credible to imagine that he concocted a story that just coincidentally happened to be true about the identity of those responsible for the murders. This premise is supported by the fact that, in coming forward ten days to two weeks after the event, he was subjecting his own actions to potentially serious criticism. Further, the Major did not even know Col. Benavides, Col. Lopez y Lopez or Lt. Col. Rivas and had...
no personal or professional reason for involving them. In addition, there is nothing in his statements that is contrary to facts otherwise known.

Having accepted the validity of the American Major's account, the Task Force concludes it is probable that what the Major says he was told by Col. Aviles is also true. We find it very unlikely that Col. Aviles would have been able to identify Col. Benavides as the culprit if he had not been told about the Colonel's alleged "confession" to Lt. Col. Rivas. Nor does there exist any incentive for Col. Aviles to have made such a potentially risky allegation if it were not based on fact. Moreover, even if Col. Aviles was aware of information that directly implicated Col. Benavides, why make up such a complicated story?

Col. Aviles was Jesuit-educated and was the individual selected to help secure cooperation from the Jesuits in the investigation. Despite his denials, the Task Force believes it is very possible that his concerns about a potential cover-up, coupled with the weight of his own knowledge, led Col. Aviles to share the information with the American Major "for use in an emergency only."

The evidence provided by the polygraphs of the American Major and on Col. Aviles are wholly inconclusive. The Task Force is concerned that, despite the obvious importance of this incident, no serious effort beyond these polygraph tests has been made to discover the truth. Lt. Col. Rivas told the Task Force that he would not take a polygraph because he is in charge of the investigation and such a test would impugn his honor. Col. Lopez y Lopez simply said that such a test would not be conclusive even if he were to take one.

There are two final questions, about which the Task Force can reach no firm conclusion. First, why did Col. Benavides admit his guilt to Lt. Col. Rivas if, in fact, he did? The Task Force has been told by sources in El Salvador, but has been unable to confirm, that Col. Benavides was aware very quickly after the
murders that his involvement was no secret within the military. He may have believed, in any case, that his involvement in the crimes could not be concealed from senior military officers. If true, it would have been logical for him to seek an assurance from Lt. Col. Rivas or a more senior military officer that he would nevertheless be protected in any investigation. And the fact is that no accusation was made against the Colonel or his unit until after the American Major came forward.

Second, would Col. Benavides and the others have been arrested if Benavides' alleged confession had not been raised so directly by American officials with the Salvadoran armed forces?

It is clear that the SIU investigation had produced some evidence against the Atlacatl unit before the arrests were made. In December, the SIU had obtained Col. Benavides' operations book indicating that a confrontation had occurred at the UCA on the night of the murders. However, the SIU did not disclose this fact to anyone until after the arrests, did not cite it as evidence at the time of the arrests, and never questioned Col. Benavides about it. The most damaging evidence cited at the time of the arrests was that provided by ballistics. However, the results from the ballistics tests which led to the arrests did not become available until at least January 5, three days after the American Major came forward.

Although the question of whether the arrests would have occurred if the Major had not come forward is extremely important, the Task Force can reach no conclusion on it. It may be that even those most directly involved, the leaders of the SIU, are not certain how this question would have been answered if the conversation between Col. Aviles and the Major had not taken place.

AFTER THE ARRESTS

The Honor Board. President Cristiani announced on January 6 that the armed forces were involved in the crimes. That same day, he
appointed a military honor board to review the evidence in the case. The honor board included five Salvadoran officers of different ranks, and was headed by General Rafael Antonio Villamariona, the Air Force Chief of Staff.

On January 7, the SIU briefed the honor board on the evidence it had gathered in the case. On January 13, President Cristiani announced that nine soldiers had been charged with participation in the crimes. What happened during the intervening five days is not clear.

According to the chronology of events that was provided to the Task Force by the U.S. Department of State, President Cristiani's announcement was based on the findings of the military honor board. The Director of the SIU, Lt. Col. Rivas, also stated that the honor board had questioned the soldiers from the Atlacatl and obtained confessions from them. General Villamariona, however, told the Task Force that the honor board obtained no confessions. Another honor board member, Col. Dionisio Machuca, said that the honor board did not even question the soldiers that had been detained. Instead, said Col. Machuca, the honor board sought to "motivate the soldiers to tell the truth."

Neither U.S. nor Salvadoran officials with whom the Task Force spoke could explain how President Cristiani was able to announce the names of those to be charged with the crimes if those names were not provided to him by the honor board, and yet the honor board denies doing anything of the kind.

It is also unclear how the soldiers now charged with the crimes were "motivated" to admit their involvement in detailed statements made at National Police Headquarters on January 13 and 14, immediately after the honor board had completed its work.

There is no known record of any kind concerning the proceedings of the honor board. Because of the confusion surrounding its role, Judge Zamora reportedly intends to ask the members of the board to come forward and present testimony in the case.
Gathering Evidence. Those arrested as a result of the statements given at the National Police Headquarters on January 13-14 were Col. Benavides, Lieutenants Espinosa and Cerritos from the Atlacatl, Lt. Mendoza from the Military School, and five soldiers, including the deserter, Sierra Ascencio.

On January 16, the accused appeared before Judge Ricardo Zamora to give formal declarations in the case. Col. Benavides, accompanied by the Director of the National Guard, Col. Juan Carlos Carrillo Schlenker, testified for more than two hours and reportedly denied all charges.

On the 19th, Judge Zamora announced his finding that there was sufficient evidence to hold all the prisoners under provisional arrest for the next stage in the judicial process, called the "investigative phase". The proceedings in the case currently remain in the investigative phase.

During the investigative phase, the judge attempts to gather evidence to determine whether a trial is warranted. The investigative phase in the Salvadoran judicial process is slated to last a maximum of 120 days after the provisional detention of the suspects begins, which in this case was on January 19. After 120 days, the judge is supposed to decide whether to conduct a trial or release the detainees. In practice, the investigative phase often exceeds 120 days, and detainees are kept in confinement until a decision on whether to conduct a trial is made by the judge. As a result, there is no effective deadline on when a decision to go to trial in the Jesuits' case will be made.

At the present time, Judge Ricardo Zamora is directing the investigation into the Jesuits' murders and is reportedly interviewing two or three witnesses (from a list of 180) per day. In addition to interviewing witnesses, the Judge is empowered to request additional investigative assistance from the STU and other elements of the security forces. For this system to work effectively, a high degree of cooperation between the judge and those with investigative capability is required. Unfortunately, a high degree of cooperation has yet to
materialize in this case.

Since the arrests were made in January, the judge and the head of the SIU, Lt. Col. Rivas, have only met once (in late March); and that meeting was arranged by the U.S. Embassy. According to Lt. Col. Rivas, the meeting concluded with a promise from Judge Zamora to follow-up with additional requests for information. To date, that has not happened.

During the past three months, the SIU has taken only two initiatives with regard to the Jesuits' case. At the urging of a U.S. Senator, it is seeking to question the participants in a meeting of military intelligence that took place at 7:30 a.m. on the morning of the murders. And at the request of the judge, it has asked the Salvadoran Military School to provide its vehicle log book for the night of the murders. The process of questioning those at the intelligence meeting has just begun; the log books have disappeared.

In the meantime, both the SIU and the Judge have failed to act on numerous suggestions from the U.S. Embassy and others that certain individuals be questioned in the case. It has been suggested, for example, that the investigators should question 1) individuals who may have talked to Col. Benavides and the others arrested about their possible involvement in the crimes; and 2) officers assigned to the Military School on the night of November 15-16, including Lt. Col. Camilo Hernandez, the second in command, about any information they might have concerning events at the School before, during and after the time the murders took place.

Problems for the Prosecution.

Co-defendant testimony. On March 21, Salvadoran President Cristiani said in an interview that he is "not confident that (Col. Benavides) is going to be convicted." The President added, "I'd be sad if he is acquitted because I think he is guilty based on the investigation."

The reasons for President Cristiani's skepticism are found in several characteristics of the Salvadoran judicial system. One of the rules
of evidence in El Salvador is that the testimony of one co-defendant is not admissible as evidence against another person charged in the same crime. This rule, which has hindered criminal proceedings in several other prominent human rights cases involving military personnel, prevents the testimony of soldiers who may have committed murder from being used to incriminate those who ordered them to do so.

The prohibition on co-defendant testimony in Latin American law originated in a desire to prevent "biased" testimony in court--i.e., testimony from persons who stand to benefit or lose from the outcome of the trial. Most Latin American legal systems now allow the judge at least some flexibility in determining whether co-defendant testimony should be allowed. However, this is not the case in El Salvador.

In 1986, the Salvadoran Assembly did modify the co-defendants rule for some crimes. At the time, criminal proceedings were beginning in a case in which military personnel and right-wing paramilitarists were accused of kidnapping wealthy civilians for ransom while making the crimes appear to be the work of the FMLN. Prosecution of the case had the backing of some of the wealthiest members of Salvadoran society, and yet the prosecution had been stymied by the rule against co-defendants testifying against each other. As a result, the Assembly passed a law allowing co-defendant testimony in cases involving extortion, drug trafficking, and kidnapping only. Cases involving murder or other heinous crimes were not included in the law. Despite this change, the kidnapping-for-profit case has not come to trial and, just this past week, charges were dropped against all but two of those arrested.

The question prosecutors will face in the Jesuits' case is whether there is enough evidence, other than that provided by his co-defendants, to force Col. Benavides to stand trial. The current admissible evidence against Col. Benavides appears to be circumstantial and consists solely of the facts that he was the commander of troops within the sector where the Jesuits were killed, that some of those troops have admitted carrying out the murders, and that there is physical evidence linking those soldiers to the crimes.
El Salvador's Attorney General, Mauricio Eduardo Colorado, told the Task Force that he believes the evidence currently available would not be sufficient to convict Col. Benavides. However, Ernesto Altschul, Vice Minister of the Presidency, urged the Task Force not to conclude that Col. Benavides will be released for lack of evidence.

It is possible that Judge Zamora or the SIU will be able to uncover other evidence implicating Col. Benavides. If not, some have suggested that the prosecutors should drop the charges against one of the accused triggermen and then use his testimony to build a stronger case against the Colonel.

In the U.S., charges might even be dropped against someone at Benavides' level if he presented firm evidence that superior officers ordered him to carry out the murders. In El Salvador, though, there is no tradition of this type of plea-bargaining or granting of immunity. There is, however, precedent for dropping the charges against individuals with minimal culpability in a crime in exchange for testimony against others more seriously involved. One possible option for the judge in this case might be to drop the charges in exchange for testimony against one of the three lieutenants who was present when Col. Benavides allegedly gave the orders, provided there is no evidence that the lieutenant shot, or ordered the shooting, of any of the victims.

b. Venue. One other potential problem for the prosecution, primarily because of the delay it would cause, is a motion from defense attorneys to have the jurisdiction of the case changed to a court in Santa Tecla, which is where the UCA is located. The defense claims that the current court does not have jurisdiction because the crimes were committed in Santa Tecla, not San Salvador.

Upon the request of Judge Zamora, Attorney General Colorado submitted an advisory opinion on the motion, finding that a change of venue is warranted under the law. In late April, Judge Zamora issued a ruling in which he disagreed with the Attorney
General. Judge Zamora's ruling remains subject, however, to a possible appeal to the Supreme Court.

Discussion and Findings. The Task Force has reached three principal findings concerning the more recent stages of the investigation as it affects those currently under arrest.

First, the Task Force hopes that President Cristiani, the armed forces, and Judge Zamora will work to clear up the mystery surrounding the actions of the Military honor board during the week of January 7-13. This critical period in the investigation resulted in a narrowing of the range of suspicion from 45 members of the Atlacatl unit, plus two officers from the Military School, to the nine who were arrested. All information provided to the honor board by any of the soldiers involved should be available to the judge and the prosecution. Instead, there is currently no record of its actions and no admission on the part of the honor board that it gathered any information, at all. This is not credible, and in a serious investigation, not acceptable.

Second, the Task Force hopes that the investigators, including both the Judge and the SIU, will begin to work more closely and that they will actively seek new evidence against those arrested, including Col. Benavides. Given the legal difficulties resulting from the prohibition on co-defendant testimony, an ongoing effort to gather additional evidence is required if justice is to be done.

Finally, the Task Force hopes that the investigators and prosecutors in this case will take advantage of every option within the Salvadoran legal code that would permit them to make a strong case against Col. Benavides, the most senior officer currently charged. Specifically, this means that consideration should be given to dropping charges against one of the lieutenants in return for his testimony against the Colonel.
WERE OTHERS INVOLVED? THE INVESTIGATION'S GREATEST FAILURE.

From the day the murders occurred, Jesuit leaders and others have expressed doubt that a crime of such gravity could have been committed without the knowledge and consent of high officials within the Salvadoran armed forces. The High Command, on the other hand, has denied ordering, consenting to, or covering up the murders. The Task Force is very concerned that no serious effort has been made by the investigators to determine whether or not the possibility of higher level involvement is supported by fact.

Need for Further Investigation—Specific Issues.

The need to consider the possibility of higher level involvement would not arise if it were clear, from the facts already established, why, how and by whom the decision to murder the Jesuits was made. In this case, however, it is not clear. A number of issues have come to light since the investigation began that bear on this question, but which have not been seriously investigated. The following is a discussion of some of these issues.

a. The Meeting of the High Command. As discussed earlier, a meeting of the Salvadoran High Command, including Col. Benavides, began at 7:30 p.m. on November 15.

According to the military officers who attended the meeting and with whom we spoke, the subject of the Jesuits did not come up at this meeting. Salvadoran authorities argue that the meeting was so large, in any event, that a decision to murder the Jesuits would not likely have been made or announced at such an event. In addition, one of those present, Col. Heriberto Hernandez, then-director of the Treasury Police, later took a polygraph examination in which he was asked about an order to kill the Jesuits and—according to U.S. officials—showed no deception when he denied knowledge of such an order.
Despite this, the Task Force believes that a meeting held immediately prior to the murders, involving the individual charged with ordering them, is of obvious importance to the investigation. To date, not one of those who attended the meeting has been required to give a formal statement concerning the meeting, itself, or any conversations they might have had with Col. Benavides before or after it.

In this connection, the Task Force notes that Col. Sigfrido Ochoa (ret.), a senior official of the ARENA party, has alleged publicly that a second meeting was held that night involving the High Command, Col. Benavides and others with direct operational responsibility in San Salvador. Neither Col. Ochoa, nor those alleged to have participated in such a meeting, have been questioned by investigators.

b. The Radio Call. Lt. Espinosa was allegedly assigned by Col. Benavides to lead the operation against the UCA. According to his own testimony, the lieutenant received a radio instruction at 10:15 on the night of the murders to assemble his troops at the military school. Lt. Espinosa did not identify who gave him the order. This means that the radio call was received either from Col. Benavides, while he was still at the meeting of the High Command, or from someone else. In either case, serious questions are raised. If Col. Benavides made the call while still at the High Command, did he do so with the knowledge, or at the direction, of others? If someone other than Col. Benavides made the call, who was it and why would his instructions have been obeyed by Lt. Espinosa?

To date, neither the SIU nor the judge has made any effort to investigate this radio call or to identify the radio operator who may have made it.

c. The Atlacatl Unit. The Commando Unit of the Atlacatl Immediate Reaction Infantry Battalion is one of the best-trained and most experienced units in the Salvadoran armed forces. The question is why this elite unit was assigned to the Military School when the
remainder of its battalion was engaged in heavy fighting against
the FMLN elsewhere in the city. It is worth noting, in this
context, that the first action undertaken by the unit after it
was assigned to the Military School on the afternoon of November
13 was to search the UCA. The last action it took before
rejoining the rest of the Atlacatl about 6:00 a.m. on the 16th
was to murder the Jesuits.

To date, the investigators have not questioned those in the High
Command who ordered the assignment and re-assignment of the unit
about their motives for doing so.

d. Military Intelligence and the Search of the UCA on November
13th. The same unit that allegedly carried out the murders
searched the UCA on November 13th, less than three days before
the crimes were committed. The SIU took detailed statements from
members of the unit about that search. Despite this, none of the
statements mentioned the presence throughout the search of an
official from Salvadoran military intelligence named Lt. Hector
Ulises Cuenca Ocampo. According to later testimony provided by
Lt. Espinosa of the Atlacatl, his unit was about to enter the UCA
on the 13th when it received a radio call from Lt. Ocampo, who
asked him to wait until he arrived. Lt. Espinosa complied.

To date, the investigators have not attempted to establish how or
why military intelligence got involved in the search of the UCA,
whether a report on the search was filed, or whether any actions
were ordered as a result. Not even Lt. Ocampo has been
questioned.

e. Armed Forces Reaction. Almost immediately after the bodies
were discovered, the Armed Forces released an official communique
stating their condemnation of "the treacherous murder committed
by the FMLN guerrillas." A similar communique was issued the
following day.

The investigators have made no effort to determine whether these
communications were simply a reflexive reaction on the part of
military propagandists to the crimes, or part of a planned effort, crudely begun at the scene of the crime, to strike back at the Jesuits and gain public relations mileage by blaming the FMLN at the same time.

Need for Further Investigation—General Issues.

The need to investigate questions such as those listed above is strengthened by other factors. These include the nature of the crimes committed, the history of ill feeling between the Jesuits and some in the armed forces, the past record of Col. Benavides and the manner in which the operation that allegedly resulted in the killings was conducted.

a. Nature of the crimes. The murders of the Jesuit fathers were crimes of immense national and international importance. The possibility that Col. Benavides would personally conceive of and execute an operation of this magnitude and brutality struck virtually everyone with whom we talked who knew Col. Benavides as extremely remote. Unlike several other senior officers, Col. Benavides did not have a history of political activism; he had not been accused of human rights violations in the past; he was not known to make public statements critical of the Jesuits, or for departing from the chain of command in carrying out his military responsibilities.

Col. Benavides is a member of the Tandona, the powerful 1966 graduating class of the Salvadoran Military Academy. He was a classmate of Chief of Staff Ponce, Deputy Defense Minister Zepeda and then-Chief of Operations, Col. Cerna Flores, all of whom were in positions senior to him when the crimes took place. These are people with whom he has worked on close terms all his adult life. Even if he had considered ordering troops under his command to murder the Jesuits, it would have been consistent with Salvadoran military tradition and his own personal history to have checked first with his superiors to determine whether their judgment confirmed his own. Why risk his career on an action that seemed likely, at a minimum, to prompt grave suspicion of the armed
forces as an institution?

When asked by the Task Force, neither Col. Ponce nor Col. Zepeda could answer these questions. Instead, they expressed the same puzzlement that Members of the Task Force felt about Col. Benavides' possible motives. They argued, however, that they themselves understood the negative repercussions that murdering the Jesuits would have and said that, for that reason, they would never have ordered or consented to such a crime.

Three theories about Col. Benavides' motivation have been put forward by U.S. and Salvadoran officials with whom the Task Force has talked. The first is that Col. Benavides was experiencing great stress as the result of a serious illness to his son which became evident shortly after the guerrilla offensive began. They suggested that Col. Benavides might have attributed his son's illness in some way to the offensive and felt a personal grievance against the guerrillas as a result.

The second theory, which is not inconsistent with the first, is that Col. Benavides may have erroneously interpreted a general exhortation on the part of his superiors to "strike back hard at guerrilla command centers" as an order to kill the Jesuits. One military officer told us that "although Benavides didn't have any 'command centers' in his sector, he did have the UCA, and for some that was the same thing."

Finally, Col. Zepeda, among others, suggested that Col. Benavides may have acted in response to pressure from younger officers under his command.

Col. Benavides has not volunteered any information that would prove or disprove the theories or suspicions thus far put forward. The Task Force believes that the doubts about his motivation in the case provide an important additional reason for investigating the possibility that other senior military officers were involved.