

# EL SALVADOR

## THE JESUIT TRIAL An Observer's Report

### Summary and Recommendations

The trial of nine Salvadoran army soldiers and officers accused in the November 1989 murders of six Jesuit priests, their housekeeper and her daughter took place in San Salvador on September 26-28, 1991, in front of a host of international observers including Americas Watch.

The jury verdict, reached after a five-hour deliberation, was a stunning blow to justice and proved how little the Salvadoran judicial system actually works. Colonel Guillermo Alfredo Benavides Moreno, head of the Salvadoran Military School, was convicted of eight counts of murder and Lieutenant Yushy René Mendoza Vallecillos, who oversaw the murder operation in the field, was convicted of the murder of one victim, the fifteen year old girl. Yet seven remaining defendants were acquitted, despite their own detailed confessions of participation in the murders. Those acquitted included two lieutenants and five enlisted men, one of whom deserted and was tried *in absentia*. All but three of these defendants had received military training from the United States, some on U.S. soil.

Confessions of six of the men who were acquitted were read to the jury and established that Colonel Benavides gave an order to three

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lieutenants to kill Central American University (UCA) rector Father Ignacio Ellacuría and to leave no witnesses. The lieutenants then moved between sixty and eighty troops to the campus, entered the Jesuit residence that they had searched only two days before, awoke five sleeping priests, took them outside and made them lie face down on the ground. Two soldiers then shot the five in the head. Another priest was shot by two soldiers in a bedroom of the residence. Complying with the order to leave no witnesses, two soldiers then murdered the priests' housekeeper and her daughter in adjacent quarters. To simulate combat, the soldiers then shot up the residence and the downstairs pastoral center and moved out. To make the killings look like the work of the FMLN, the soldiers used an AK-47 rifle, the weapon commonly used by the guerrillas, and scrawled a message on a sign making it look as if the FMLN took responsibility for the killings.

One possible explanation for the unexpected acquittal of the confessed murderers was that the jury accepted the implied defense that the junior officers and soldiers were obeying higher orders. This defense, however, was not explicitly argued, perhaps because the defendants were not individually represented by counsel; rather, the defense counsel represented all of the nine accused, including Colonel Benavides. The due obedience defense, moreover, is unavailable in the case of a manifestly illegal order, such as the order to summarily execute unarmed civilians.<sup>1</sup>

- *Since the armed forces identified all the defendants in the case and since the defendants then confessed their roles in the murders to the police, Americas Watch urges the armed forces to dismiss the soldiers who were acquitted. It would be a travesty to permit confessed murderers to return to active duty where they would be free to commit other crimes. Americas Watch further urges that the United States deny permission to enter the U.S. to both the convicted officers and the unconvicted six who nonetheless confessed to participating in the murders.*
- *Americas Watch recommends that the investigation into the likelihood that Colonel Benavides acted in conjunction with or on orders from other high-ranking officers be vigorously pursued in El Salvador. Congressman Joe Moakley, chair of a House Task Force monitoring the Jesuit investigation, stated in mid-November that sources he deemed credible told him that the decision to kill the Jesuits was made at a meeting at the Salvadoran Military School the afternoon before the murders. Those present included the current Minister of Defense, General René Emilio Ponce; the current Vice-Minister of Defense, General Orlando Zepeda; the current head of the First Brigade, Colonel Francisco Elena Fuentes; and then-chief of the Air Force, General Juan Rafael Bustillo. According to Moakley, Bustillo was the instigator and the reactions of other officers ranged from "support to reluctant acceptance to silence."<sup>2</sup>*
- *The U.S. government should also, on the basis of its own intelligence, determine whether the government of El Salvador conducted a thorough and professional investigation into the Jesuit murders as a condition for continued U.S. military aid. We believe that such an investigation was not held and accordingly we recommend suspension of all military aid. Moreover, we urge the U.S. government to release documents relevant to the Jesuit case requested by Americas Watch and others through the Freedom of Information Act, particularly now that a trial has been held.*
- *While sentences have not been handed down for those convicted and further appeals are likely,*

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<sup>1</sup> Article 40, paragraph 2(C)(c) of the Penal Code rules out the "due obedience" defense if the behavior "manifestly reflects a punishable act."

<sup>2</sup> Statement of Representative Joe Moakley, Chairman of the Speaker's Task Force on El Salvador, November 18, 1991, pp. 3-4.

*Americas Watch opposes amnesty for the defendants even if an amnesty arises out of peace talks now underway between the Salvadoran government and the FMLN. Americas Watch opposes amnesty or pardon of any person accused or convicted of egregious human rights abuses including murder, torture and forced disappearance, and this case is no exception.*

### **Impunity: The History of Incomplete Criminal Investigations**

Traditionally impunity in El Salvador has been the result of several factors: the failure to investigate abuses or to convict those responsible, and the granting of overly-broad amnesty, such as the one decreed by President José Napoleón Duarte in 1987, ostensibly in compliance with the Central American Esquipulas Accords.

Total impunity did not characterize the Jesuit case, primarily because it attracted enormous international attention. This included the appointment late in 1989 by Speaker of the House Tom Foley of the Speaker's Task Force on El Salvador, prominently chaired by Congressman Joe Moakley. His regular reporting and fierce personal commitment to the case succeeded in keeping a spotlight on the investigation and its shortcomings.

Despite the work of Moakley and others, the Jesuit investigation was inadequate and superficial. The police did not follow up on obvious clues and the court, which has investigatory powers and responsibilities, was stymied from completing its work by army recalcitrance.

The most important question of whether Colonel Benavides acted along with or on orders from other high-ranking officers was never seriously probed, although substantial circumstantial evidence pointed to a wider conspiracy. The statements in the court record of two lieutenants are that Colonel Benavides gave the following order on the night of the killings:

This is a situation where it's them or us. We are going to begin with the ringleaders. Within our sector we have the university and [Central American University Rector Ignacio] Ellacuría is there. You [addressing Lt. Espinoza] 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.

The order itself suggests that Benavides was acting as part of a larger effort to target suspects during the guerrilla offensive in the capital.

Colonel Benavides was not considered by reputation to be the type of person who would undertake on his own an action of such magnitude.

The evidence read to the jury showed that on the night of the murders Colonel Benavides had attended a meeting of top military leaders at army headquarters before returning to the Military School and giving the order to kill the Jesuits. The jury was also told that the Jesuits had been denounced as rebels or rebel sympathizers on a government-controlled call-in radio show aired during a massive guerrilla offensive in San Salvador. Indeed, the Jesuits had been a perennial target of the right-wing inside and outside the government, and had long suffered abuse, denunciation and physical attack. The first politically-motivated murder of a Jesuit in El Salvador took place in 1977.

Moreover, the search of the Jesuit residence two days before the killings was approved by Colonel Ponce, then head of the Army General Staff and now Minister of Defense (and promoted to General). The search was retroactively approved by President Alfredo Cristiani. The search was conducted by some of the same soldiers of the Atlacatl Battalion who carried out the killings two nights later, and can credibly be

viewed as a preparatory reconnaissance mission. In a departure from routine practice, a military intelligence officer participated in the search on orders of a superior officer.

Other details suggest elaborate pre-planning. The killings were staged to look like the work of the guerrillas, and one of the murder weapons was an AK-47 typically used by them. The soldiers on the scene scrawled a fake "message" from the FMLN on a sign in which the FMLN supposedly took responsibility for the killings.

It appears that the cover-up of the crime would have succeeded were it not for statements made by a U.S. military adviser, Major Eric Buckland. In early January 1990 he notified his superiors that information he had received on December 20, 1989, from a Salvadoran Army colleague, Colonel Carlos Armando Avilés, implicated Colonel Benavides. According to Buckland, Avilés said that Benavides had confessed his role in the killings to Lieutenant Colonel Manuel Antonio Rivas, head of the Special Investigative Unit (SIU).<sup>3</sup> Rivas then told Colonel Iván López y López, a former head of the SIU, who was subsequently brought back to assist with the Jesuit investigation. Neither officer acted on the information from Benavides.

U.S. Embassy officials, including the head of the U.S. Military Group (MilGroup), confronted the Salvadoran High Command with Buckland's information in early January. The Army responded by appointing its own "Honor Commission" on January 5, 1990. The Honor Commission supposedly did its own investigation and presented a report to then-Defense Minister Rafael Humberto Larios, who forwarded it to President Cristiani on January 12. The report, read to the jury, contained a summary description of the crime and the names of the nine suspects who were later put on trial. The report did not disclose how these particular nine were selected as defendants. That, in fact, has never been clarified. The Honor Commission claimed it received the names of suspects from the SIU; but the SIU denied selecting these names.

The identities of the accused were announced on television by President Cristiani on January 13, 1990. The police assigned to the SIU took their extrajudicial confessions on January 13 and 14, then remitted the accused along with the evidence, to the court. The court ordered the continued police detention of those named and began taking their statements on January 16.

Colonel Benavides stuck to his original story that he had no knowledge of the Jesuit murders until he learned of them from media reports. The other defendants, who had made confessions to the police that they intended to be exculpatory (that is, they claimed to be following orders as an excuse for their actions) refused to ratify those confessions in court.

The Honor Commission and the SIU concluded their work in January and the rest of the investigation was left to the judge. In fact, the bulk of the evidence against the nine defendants was obtained under army and police supervision prior to the time the defendants were turned over to the judge for judicial proceedings. Despite the judge's efforts over many months, little progress was made in investigating the issue the Army chose to obscure or ignore: the possible involvement of other high-ranking officers.

In mid-1991, it was revealed through efforts of lawyers for the Jesuits that Colonel Iván López y López, who was reassigned to the SIU in the wake of the murders, had actually been on duty at the military command center on the night of the murders and was thus in a position to have personal knowledge about possible involvement of other officers. The SIU investigation was thus tainted from the beginning, as it was

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<sup>3</sup> The SIU was created and funded by the United States and its members trained by U.S. advisers. It was the police unit assigned to investigate the murders.

supervised by someone who was a potential witness and who had also supposedly been told early on that Colonel Benavides had confessed his role in the crime.

### **Impunity: The Jury Acquittal**

The jury verdict absolving self-confessed murderers was a severe setback to accountability in El Salvador. Jury acquittal of those who murdered unarmed civilians does, however, continue a tradition in El Salvador.

Although the vast majority of human rights abuses are never investigated, much less brought to trial, several of those that have made it to the courts have also resulted in verdicts of not guilty. The jury's failure to convict arises chiefly out of fear. Early in 1991, for example, a jury acquitted a soldier who shot a journalist in eastern San Miguel during the 1989 elections, after the uniformed friends of the defendant packed the courtroom. After the Jesuit trial, a civilian jury acquitted thirteen civil defense members charged with a mass killing of civilians in the town of Armenia in 1982 in which the victims' bodies were thrown down a well. In this case, too, soldiers surrounded the court room and the jury acquitted even those who had confessed after hearing only the first round of defense arguments.

Until now the human rights cases that have resulted in convictions have usually involved foreign victims as well as enormous international pressure. Such cases include the 1980 murders of four American churchwomen and the 1981 murders of two U.S. labor advisers and the Salvadoran head of the land reform agency. These cases, tried in 1984 and 1986 respectively, resulted in the convictions of all those on trial: the lower-level triggermen. In the churchwomen's case, extensive measures were undertaken to protect the jury. In both cases senior officers did not even stand trial.

### **Impunity of the Higher-Ranking Officers**

The only respect in which the Jesuit case is a break from past traditions of impunity is that it resulted in the conviction of a senior military officer for having ordered the murders, and of the officer placed in charge of the operation in the field. It is difficult to imagine, in fact, that a high-ranking officer could have escaped prosecution, given the notoriety of the crime in El Salvador and abroad, its illustrious victims, and the manner in which the murders were carried out. A military operation involving coordinated movement of some sixty to eighty troops could only have taken place with senior coordination.

Whether the conviction of these two officers will be upheld on appeal is uncertain. Military defendants in El Salvador have often escaped prosecution or sentencing on the basis of extreme technicalities or as a result of rules being bent for their benefit.<sup>4</sup>

### **Impunity: The Practice of Amnesty**

One principal reason for the endurance of impunity is the practice of granting amnesties. A broad amnesty approved in October 1987 freed not only the few soldiers convicted in most human rights cases up

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<sup>4</sup> One outrageous example was in the case of the murdered U.S. labor advisers and the head of the agrarian reform agency. Captain Isidro López Sibrián of the National Guard, one of the officers who allegedly gave the assassination order, had red hair. But he was allowed to dye his hair black before appearing in a police lineup. An eyewitness to the murders, looking for a redhead, failed to identify López Sibrián. The Salvadoran Supreme Court upheld the López Sibrián's "right" to dye his hair and he was never made a defendant in the case.

to that date,<sup>5</sup> but also stopped all investigations of any "crimes committed by any person, in which the motive, occasion, end or consequence was the armed conflict." The amnesty thus sanctioned the past death squad operations and military massacres of civilians as long as they could be said to have been conducted in connection with the ongoing war. (A legal challenge in 1987 to the amnesty law was ignored by the Supreme Court, which simply never ruled on it.)

In the Jesuit case, the convicted defendants similarly may escape penalty for the crime, regardless of what happens to their case on appeal. There is the distinct possibility that they will be pardoned or granted amnesty as part of an overall settlement between the Salvadoran government and the FMLN of the twelve year old war. Such an amnesty would also cut short any investigation into the possibility that Colonel Benavides was himself acting under orders.

### **Apparent Defects in the Judicial System**

Unlike most civil law systems, El Salvador has trial by jury in homicide cases. The jury system was adopted in the 1930s but lacks many of the features that have been developed in the United States, Canada, and other jurisdictions where the jury is in use.

As it has evolved, the jury system of El Salvador only serendipitously produces justice in complex cases involving military defendants.

### **Due Obedience or Duress Defenses**

Although the jury did not provide any reasons for its ruling, it is possible that the jury accepted the due obedience defense for soldiers who they saw as acting under orders, while convicting the officers giving the orders.

The due obedience defense, however, is not available to defendants under Salvadoran or international humanitarian law. The defense is available only in cases where the order is not "manifestly illegal." An order to execute captives and all witnesses is illegal under the law of El Salvador and applicable international human rights conventions governing internal armed conflict.

Salvadoran soldiers must have known that killing unarmed civilians who were lying face down on the grass and posed no threat of injury is wrong. The High Command has acknowledged that such killings are illegal. In addition, the U.S. Congress has been assured by the Bush administration, and previously by the Reagan administration, that training provided by the U.S. military to the Salvadoran Army has included human rights lessons.<sup>6</sup>

Whatever logic the jury may have had in mind, defense attorneys did not make the due obedience argument. This is probably for two reasons: 1) its legal inapplicability, and 2) the fact that the defendants were represented collectively by four defense lawyers. Attorneys would not have driven a wedge between

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<sup>5</sup> One notable case exempted from the amnesty involved the four U.S. churchwomen killed in December 1980. Five National Guardsmen found guilty of the murders in May 1984 were not released, because a judge deemed the murders common crimes not connected to the civil war.

<sup>6</sup> Unfortunately, the Salvadoran Army and the Atlacatl Battalion in particular have a long history of waging war by summarily executing civilians. The most notorious recent episode is the December 1981 massacre of between 700 and 1,000 peasants by the Atlacatl Battalion in and around the hamlet of El Mozote.

Colonel Benavides and the lower-ranking defendants by hinting that the officer who gave the order was guilty while those who followed orders were not.

Similarly, defense attorneys did not argue that their clients had acted under duress, no doubt because there was no record of direct or life-threatening pressure that would have justified the taking of innocent life. None of the soldiers testified in his extrajudicial confession that there was anyone standing near the soldiers, menacing them if they did not act, or presented any other facts that would indicate that the soldiers faced a threat of grave physical violence should they refuse to carry out the murders.

The due obedience defense was not seriously pursued by the defense attorneys, who only suggested it in passing. "And what if they did not obey?" they rhetorically asked the jury.

The jury verdict suggests that they applied the due obedience or duress defenses, despite the absence of any basis in law for them. The jury received virtually no instruction from the judge and is permitted *carte blanche* in arriving at any decision it deems appropriate.

The jury's verdict sets a terrible precedent. No soldier wishing to disobey an illegal order will be able to argue to his commander that he will risk punishment if he obeys. At the same time, commanders can point to the precedent set in the Jesuit case: that even confessed triggermen will go free.

### **The Role of the Jury and Lack of Instruction**

In the ordinary civil law system, there are two judges, the investigating magistrate and the trial judge. The investigating or instructing magistrate collects and analyzes the evidence (as the police working closely with the prosecutor would do in the United States) and decides if there is sufficient cause to try the defendants (as a U.S. grand jury would do).

In ordinary civil law systems the trial judge tries the case by studying the record and hearing the arguments of the prosecutor and defense counsel. He may also order that additional evidence be produced. His role is to decide issues of fact as well as issues of law. He rules on the guilt of the accused and what the sentence should be.

Unlike most civil law systems, however, in El Salvador the same judge who conducts the instruction or investigation phase also supervises the trial and imposes sentence.

In the United States, issues during the trial phase are divided into issues of fact and issues of law. The person deciding issues of law is always the judge. The fact-finder may be either the judge or the jury. The jury never decides issues of law; it resolves factual issues and applies the law as determined by the judge.

For instance, in a case like the Jesuit case, a U.S. judge would instruct the jury that a "due obedience" defense was not available to the soldiers on trial; that is, that they could not apply such reasoning in absolving the defendants because "due obedience" does not apply when the order given is manifestly illegal. The judge would point out to the jury that as a matter of international law, the order to kill unarmed captured civilians is manifestly illegal.

In the Jesuit case, however, the judge did not inform the jury as to the law. In part this appears to be due to the fact that in El Salvador the jury is privileged to ignore the law. Article 363 of the Code of Criminal Procedure states that the president of the jury is to inform the jurors, when they are left alone to deliberate, as follows:

The law does not ask jurors how they arrived at a decision; the law does not prescribe for them the rules to be used to deduce if a particular piece of evidence is sufficient; it stipulates that they must ask themselves in silence and spiritual absorption, and seek in the sincere judgment of their consciences, what impression the evidence produced against and in favor of the defendants has had on their judgment. The law does not say: do you take that fact as truth; it asks only one question which circumscribes the limits of their duties: are you personally convinced?

There is nothing else in the criminal procedural code on the relationship between the law and facts known to the jury.<sup>7</sup> The criminal code, it appears, explicitly invites jurors to substitute inner feelings for laws and evidence.

### **The Criminal Procedure Code: No Oral Evidence**

The jury in El Salvador does not hear oral evidence and has no opportunity to judge the character and credibility of the witnesses. The jury does have the right to summon and question witnesses and defendants; although the jury in the Jesuit case was advised of this right by the judge, they did not avail themselves of it. (Juries in El Salvador rarely do.) The judge did deny the request of the private prosecutors working for the Jesuits to call Colonel Iván López y López as a witness. He briefly oversaw the investigation of the case for the SIU and was at command central on the night of the murders. He therefore would have been in a position to comment on the question of a broader conspiracy in ordering the murders.

Following ordinary Salvadoran procedure, the judge's law clerks read excerpts of relevant testimony and documents (called the minutes, or *la minuta*) from the file to the jury. Testimony included the extrajudicial confessions of seven of the defendants. After each confession was heard, the law clerk then read the statements of two police witnesses to each confession, stating that the testimony they witnessed was freely given. Those statements reiterated the confession of the defendant. Also read to the jury were ballistics and explosives reports, itemizations of the value of property destroyed (relevant to the terrorism charge on which none of the defendants was convicted), several documents from the military which indicated that the military institution had turned these accused over for trial, and appellate court rulings. The reading of *la minuta* lasted about one and a half days.

On the afternoon of the second day, the two private prosecutors representing the victims began making their arguments to the jury for conviction of the accused. They were followed by three public prosecutors. Presentations by the prosecution took up about six hours. Four defense attorneys then argued for the next six hours for acquittal of the defendants. They began their arguments at 9:30 P.M. on the evening of the second day. The session lasted until 11:45 P.M. and continued the following morning.

The defense attacked the credibility of some of the testimonies by pointing to contradictions, referring to the page number in the record where such contradictions could be found. For the most part, however, the arguments were historical, political, emotional and rhetorical, with little attention to the facts.

Following about two hours of additional arguments by both sides, the jury retired at 4:45 P.M. of the third day and the observers were dismissed from the courtroom. If the judge gave any instructions at all to the jury, they were not public.

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<sup>7</sup> A jury verdict cannot be appealed and may be nullified only in cases of bribery, intimidation or violence, or procedural errors regarding the jury, such as a juror's failure to meet one of the requirements for service (such as being twenty-one years old).

Over 5000 pages in the court record was available for the jury to consult during deliberation.

### **Facts Outside the Record**

The attorneys were permitted tremendous latitude in making their arguments to the jury and on many occasions referred to facts outside the record, including their own personal testimony as to the guilt or innocence of the accused and their own experiences during the November 1989 guerrilla offensive in San Salvador during which the Jesuits were killed.

One defense attorney actually suggested to the jury that Colonel Benavides had already been acquitted by God. The lawyer told a story of how Benavides' mother prayed in church for the recovery of Benavides' son who had been ill; the son then recovered. "Good is rewarded, evil is punished," he concluded.

The judge did not rule such digressions irrelevant.

### **Due Process in the Case of Multiple Defendants**

There is no Fifth Amendment privilege against self-incrimination in El Salvador. A defendant must make a statement to the authorities, although he will not be liable for perjury if he lies.

Defendants in El Salvador, however, enjoy an unusual law of enormous benefit: the testimony of one defendant may not be used against another in most cases. (In 1986, a legal reform allowed the use of co-defendant testimony in cases involving drug-trafficking, extortion, and kidnapping. Pleas by the Archbishop at the time to extend the reform to murder cases as well fell on deaf legislative ears.)

No plea-bargaining is allowed. Thus, the only possibility for bringing co-defendants' testimony into evidence against another defendant is to dismiss charges against the one.

In a case involving multiple defendants, however, the jury will hear confessions of the defendants and any statements he makes regarding other co-defendants will be heard as well. The unusual protection provided defendants under Salvadoran law may thus be circumvented in practice, as the jury will hear statements by one defendant about other co-defendants even though the statements are not legally permissible as evidence.

In the Jesuit case, the jury heard repeated testimony against Colonel Benavides by lieutenants who were his co-defendants. Their extrajudicial statements recounted the meeting at which Benavides ordered them to kill the Jesuit rector of the UCA and leave no witnesses.

There was other evidence against Colonel Benavides in the record, but none as strong as the direct statements of the lieutenants. Benavides gave completely exculpatory statements to both the police and the court, insisting that he learned of the killings from the media.

Benavides was the only defendant not present at the scene of the crime. Most of the other evidence against him, as argued by the prosecutors, rested on his role as commander of the zone on the night in question and his ultimate responsibility for what occurred there. During the offensive, he was named head of a special security zone which included the most strategic military headquarters in the country and, coincidentally, the UCA campus. His job was to protect the entire area from guerrilla attack; indeed, the guerrillas never succeeded in making any inroads into this zone, although they held several working class neighborhoods in San Salvador for days on end.

The Jesuit residence where the killings occurred, moreover, was searched by the Atlacatl Battalion two days before the murders. Since many of the same soldiers who conducted the search subsequently carried out the murders, it appears that the real purpose of the search was to stage a reconnaissance mission in preparation for the murders.<sup>8</sup> No arms or evidence of illegal activities turned up in the search.

Benavides was the only person who could have authorized the removal of the weapons used at the crime scene from the Military School arsenal. Expecting that the jury would readily convict those who had confessed but be more hesitant to convict a colonel, both prosecutors and defense attorneys devoted serious attention to Benavides' role. Salvadoran law provides that those who give an illegal military or hierarchical order to commit a crime are guilty as "mediate" authors of the crime.

### **Personal Safety of the Jury**

The jury was summoned to court on the morning of the trial. Of seven persons who appeared, one was excused, five seated as jurors, and one selected as an alternate. A simple majority of three is required for conviction.

In the Jesuit case, unlike other cases in El Salvador, the jury selection was not done publicly. The identities of the jurors were not publicly disclosed and were to remain hidden to the defendants. Few observers believed, however, that the anonymity of the jurors could be guaranteed.

The fact that there were military defendants in this case which had received enormous publicity within El Salvador was itself enough to generate concern on the part of any juror as to his or her individual safety, regardless of precautions taken on the days of the trial.

The trial took place not in the ordinary tribunal but in the Supreme Court building, under the control and supervision of the President of the Supreme Court. His personnel screened the observers going in and out of the building (it appeared that there was no other business being conducted in the building during this trial) and guarded the jury. Medics who were employees of the forensic unit of the court also had access to the jury.

During the trial, the jury was hidden from the view of the defendants and all others in the courtroom except for the attorneys for both sides and other court officials. The jury was also sequestered during the trial. The extraordinary measures to protect them were aimed at minimizing the possibilities of coercion or intimidation.<sup>9</sup>

Despite these precautions, however, it cannot be said that jury acted without pressure. Following the trial, Congressman Moakley cited evidence that one of the defendants in the case had threatened to implicate other senior officers in the case unless he were found not guilty. "Conveniently for the armed forces," Moakley wrote, "that defendant was not convicted."<sup>10</sup> Moreover, on the last day of the trial,

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<sup>8</sup> The commando unit of the Atlacatl battalion that carried out the murders was temporarily housed at the Military School during the FMLN offensive. According to the Lawyers Committee for Human Rights, one of the defendants, Lieutenant José Ricardo Espinoza Guerra, was the officer in charge of the search. Espinoza later received the order from Colonel Benavides to kill the Jesuits.

<sup>9</sup> In another case in 1990, however, a jury acquitted a soldier accused of the 1989 murder of a journalist in San Miguel. The verdict was clearly the result of intimidation of the jury by the defendant's fellow soldiers, who packed the courtroom.

<sup>10</sup> Joe Moakley, "Justice Disserved in the Jesuit Murders," *Washington Post*, October 14, 1991.

members of the military and their families led by a senior military officer staged a loud demonstration outside the Supreme Court building. Sound equipment blared the national anthem and military taps while guards outside the building made no attempt to interfere. The demonstration represented a clear attempt to intimidate the jurors. That they felt secure enough to convict two officers while letting others, all members of the Atlacatl battalion, go free may signify nothing more than a fix.

### **The Rushed Atmosphere**

It is rare that a trial lasts more than one day in El Salvador. The common practice is for the jury to be sworn in and to hear the evidence, deliberate and decide on the same day. Salvadoran law provides that the jury may not recess longer than six hours, although in this case the jury exercised its discretion to get some sleep. Nevertheless, the proceedings lasted until 11:30 P.M. or midnight on the first two days of the trial, and ended at 4:45 P.M. on the third day. The jury then deliberated for about five hours.

The volume of evidence and the number of defendants made this proceeding last far longer than the ordinary jury trial. But, as the trial observers themselves noticed, exhaustion soon set in due to the heat, lack of air conditioning, and need to concentrate on evidence being read aloud. The fact that the proceedings resumed after dinner and lasted until almost midnight two nights in a row imposed an additional strain on the jury and created pressure on them to complete their deliberation without delay. Given the volume of written material presented to the jury, it is absurd to have expected them to absorb it all before rendering a verdict.

### **The Show Trial Atmosphere**

Because of the magnitude of the crime, there was enormous pressure on the government of El Salvador to investigate the case and punish the guilty.

The trial setting itself, however, made clear that the defendants were being tried in order to satisfy international opinion. The eight military defendants were seated with their backs to the judge, facing the international observer section (and no more than two meters from that section). Behind the observers stood a bank of television cameras and lights. The defendants' attorneys were seated in a corner of the improvised courtroom. Although the importance of broadcasting the trial proceedings throughout El Salvador cannot be underestimated, the staging of the trial as a public relations event does little to inspire confidence that the Jesuit trial will serve as a precedent in strengthening the Salvadoran justice system.

### **The Inadequate Investigation**

By far the most glaring deficiency in the trial was what did not come out in the investigation leading up to it. The procedures themselves for carrying out an investigation mitigated against a thorough inquiry. In a civil law system such as El Salvador's, the role of the investigating magistrate is to collect evidence in order to decide whether to try the defendants or to dismiss the case. There is no provision under Salvadoran law for a judge to receive confidential information under protective order, and everything entering the record is subject to public scrutiny. Thus, the U.S. government refused to provide classified documents on the grounds that they would be made public, and witnesses or others with information about the case could not come forward confidentially. It is obvious that if sensitive information is to be developed, it will not be by the judge.

The judge is at a disadvantage to the police, who are not required to make interviews public. Yet the police assigned to the case (operating through the SIU) showed a distinct disinterest in developing the investigation, and took no further steps after defendants were named and turned over to the court in January

1990.

One of the most egregious failings of the SIU's investigation was its negligence in securing and protecting evidence during the period in which it had charge of the investigation. All logbooks kept during 1989 at the Military School were burned in December 1989, something which was only discovered in May 1990. Following other army efforts to frustrate a further investigation, including perjury, Congressman Moakley charged the High Command in August 1990 with engaging in "a conspiracy to obstruct justice." U.S. military aid was slowed down shortly thereafter, eliciting only a minor show of cooperation.

Following the example of President Cristiani in September 1990, five colonels appeared<sup>11</sup> and submitted to cross examination about the meeting held at army headquarters on the night of the murders. But they did not reveal any useful information and all denied that there was any discussion of the university or the Jesuits at the meeting. All continued to deny any higher-up involvement in the planning or execution of the murders.

The investigation also failed to explore the roles played by military intelligence or by officers in the chain of command between Colonel Benavides and the lieutenants charged in the case. All these deficiencies account for the claim by congressional investigators that the military hierarchy and not the judge controlled who was questioned, who was detained, and who was ultimately charged with responsibility for the crime.<sup>12</sup>

The military's conspiracy of silence is not surprising given what may be the actual involvement of other senior officers in the murder plot. According to the statement released by Congressman Moakley on November 18, 1991, "the decision to murder the Jesuits was made at a small meeting of officers held at the Salvadoran Military School on the afternoon prior to the murders (November 15, 1989)." Those present included then-head of the Air Force, General Juan Rafael Bustillo, current Defense Minister General René Emilio Ponce, current Deputy Defense Minister Juan Orlando Zepeda, and current commander of the First Brigade, Colonel Francisco Elena Fuentes. According to Moakley, the initiative for the murders came from Bustillo, "while the reactions of the others ranged from support to reluctant acceptance to silence."

Americas Watch has no confidence whatsoever that the involvement of these other senior officers will ever be probed. And that compounds the tragedy of the murders themselves.

## **The Sentencing**

Judge Ricardo Zamora of the Fourth Penal Court in San Salvador has delayed sentencing Colonel Benavides and Lieutenant Mendoza beyond the thirty days of the jury verdict that is prescribed in Salvadoran law. The judge must also rule against Lieutenant Mendoza and Lieutenant Colonel Carlos Camilo Hernández, second in command at the Military Academy (not among the murder defendants) for destruction of evidence by burning the logbooks from the Military Academy. Judge Zamora also must rule on the charge of planning and conspiracy to commit acts of terrorism against Colonel Benavides and the three lieutenants. He must also decide whether to grant damages in a civil suit filed by the Jesuits which would primarily benefit the son of Elba Ramos, the Jesuits' housekeeper slain along with her daughter on the night of the killings. Several other soldiers (not among the murder defendants) have been charged with

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<sup>11</sup> Salvadoran law provides that colonels need not give oral testimony as witnesses in any judicial proceeding. They may, if they wish, waive this privilege.

<sup>12</sup> Memorandum from Jim McGovern and Bill Woodward to Hon. Joe Moakley, January 7, 1991, p. 4.

perjury and are subject to separate proceedings. Because defense attorneys have petitioned that Judge Zamora recuse himself from the case, primarily due to his association with the UCA, it is unclear when sentences will be passed down for those convicted of murder or for those still accused of lesser crimes.

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*For additional information:  
Jemera Rone 212-972-8400  
Cynthia Arnson 202-371-6592  
Susan Osnos 212-972-8400*

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**Americas Watch**  
**1522 K St., NW, No. 910**  
**Washington, DC 20005-1202**