THE HOMICIDE OF DR. VICTOR MANUEL OROPEZA CONTRERAS

A CASE STUDY OF FAILED HUMAN RIGHTS REFORMS IN MEXICO

4 December 1991

A Report of

The Minnesota Lawyers
International Human Rights Committee

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PREFACE

The death of physician and journalist Dr. Víctor Manuel Oropeza on 3 July 1991 caused consternation throughout Mexico and the international human rights community. Because of the documented history in Mexico of human rights abuses in general and occasional oppression of journalists in particular, and because of the openly critical nature of the victim's newspaper columns, this case merited strong scrutiny. The abuses and irregularities which characterized the subsequent homicide investigation required even greater scrutiny, and angered many who had hoped for reform in the Mexican criminal justice system.

The Minnesota Lawyers International Human Rights Committee ("Minnesota Lawyers Committee" or "Committee") initially learned of the case on 4 July 1991 through COSYDDHAC,[1] a reputable nongovernmental human rights organization based in the state of Chihuahua. COSYDDHAC asked the Minnesota Lawyers Committee to become involved in the case. The surviving family of Dr. Oropeza also welcomed the Committee's participation.

The Minnesota Lawyers Committee sent lawyer James E. Dorsey to Ciudad Juárez on 1-4 September 1991 to investigate the circumstances surrounding the death of Dr. Oropeza and the homicide investigation which followed. During his stay, Dorsey interviewed the judge, the detained defendants, the family of the victim, the new local commander of the Federal Judicial Police, journalists, human rights workers, and a private investigator. Dorsey requested, but was refused, interviews with the state prosecuting authorities and the local commander of the state judicial police José Refugio Rubalcava Muñoz.

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[1] COSYDDHAC is the acronym for *Comisión de Solidaridad y Defensa de los Derechos Humanos, A.C.* (Human Rights Solidarity and Defense Commission).

At the same time, on 4 September 1991, Committee representatives Daniel L. Gerdts and Hubert H. Humphrey III were in Washington, D.C., for a meeting with Mexican Federal Attorney General Ignacio Morales Lechuga. Gerdts and Humphrey questioned Morales Lechuga about the case at that time.

With the indispensable collaboration and sponsorship of the American Association for the Advancement of Science, the Committee also arranged for the attendance of two physicians, as independent observers, at the second autopsy of Dr. Oropeza on 12 September 1991. The two physicians were Dr. James L. Frost, a forensic pathologist who is the Deputy Chief Medical Examiner for the State of West Virginia and Professor of Pathology at West Virginia University School of Medicine (WVUSM), and Dr. Mariana E. Berho, an Argentine physician training in pathology at WVUSM who worked closely with Dr. Frost. Drs. Frost and Berho also had the opportunity to interview the family of Dr. Oropeza, consult with the investigators of the Mexican National Human Rights Commission, and talk with members of COSYDDHAC.

This report is based on information gathered during those visits and interviews and on additional information supplied by COSYDDHAC. The report was written by James E. Dorsey and Daniel L. Gerdts with contributions or editorial assistance from Dr. James L. Frost, Donald Johnson, and Sonia A. Rosen.

I. INTRODUCTION

A. Human Rights Violations in the Mexican Criminal Justice System

The Minnesota Lawyers Committee began its project on human rights in Mexico in July 1988. After extensive legal research and field work, the Committee in July 1990 published its first report on Mexico entitled *Paper Protection: Human Rights Abuses and the Mexican Criminal Justice System*.

The report documented serious and chronic abuses of human rights by Mexican police forces. It found that arbitrary detention and torture by state and federal judicial police were standard methods of crime investigation, that confessions to criminal charges routinely were coerced through torture, and that the court system accepted these confessions despite domestic and international laws which strictly forbid such use. Of grave concern was the virtual impunity to appropriate sanctions enjoyed by agents responsible for the abuses.[2]

The report also provided a legal study of Mexican criminal procedure and the applicable international law, and an analysis of perceived flaws in Mexican criminal procedure which appeared to foster the abuses. Based on that analysis, the report proposed a series of recommendations to help reform the system.

Following the publication of the 1990 report, the government of President Salinas de Gortari adopted legislative reforms, many of which mirrored the Committee's recommendations. Thereafter, Committee representatives

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[2] Both Amnesty International and Americas Watch have produced reports on Mexico which independently document the same kinds of abuses. *See, e.g.*, AMERICAS WATCH, UNCEASING ABUSES: HUMAN RIGHTS IN MEXICO ONE YEAR AFTER THE INTRODUCTION OF REFORMS (1991), and AMNESTY INTERNATIONAL, TORTURE WITH IMPUNITY (1991).

visited Mexico on several occasions and established cordial relations with the government's recently established National Human Rights Commission and with the current Federal Attorney-General.

B. The "Minnesota Protocol": International Death Investigation Standards

Human rights advocates, particularly those in the medical and legal fields, recently acquired another important tool for holding governments accountable for abuses. That tool is the *Manual for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* ("*Manual*"), a technical handbook for medicolegal investigations of suspicious deaths.[3]

The *Manual* sets forth a set of twenty principles adopted by the United Nations for independent medicolegal investigations.[4] The handbook section ("*Minnesota Protocol*") provides additional guidance by offering technical advice on the meaningful implementation of the principles. Included in this section are: a model protocol for conducting a legal

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[3] U.N. CENTRE FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS, MANUAL ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS, U.N. Doc. ST/CSDHA/12, U.N. Sales No. E.91.IV.1 (1991) [hereinafter MANUAL]. The MANUAL was prepared with assistance from the American Association for the Advancement of Science and the Minnesota Lawyers International Human Rights Committee.

[4] The *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* were adopted by the United Nations Economic and Social Council on 24 May 1989. E.S.C. Res. 1989/65. U.N. Doc. E/1989/INF/7, at 129-34 (1989) [hereinafter *Principles*]. The U.N. General Assembly endorsed the *Principles* in December 1989. G.A. Res. 44/159 of Dec. 15, 1989; G.A. Res. 44/162 of Dec. 15, 1989. For the text of the *Principles*, *see* Appendices.

inquiry as well as factors which may trigger a special investigation, and guidelines for establishing an independent commission of inquiry. The second and third sections contain a model protocol for conducting an adequate autopsy and a model protocol for disinterment and analysis of skeletal remains. Two important annexes to the *Manual* provide information on the postmortem detection of torture.

The *Manual* can be used in circumstances where there is reason to believe that a government or governmental entity may be involved or responsible for a death. Typical cases include: political assassinations, deaths resulting from torture or ill-treatment in prison or detention, deaths resulting from enforced "disappearances," deaths resulting from the excessive use of force by law-enforcement personnel, executions without due process, and acts of genocide.

Most countries have a system for investigating the cause of death in cases with unusual or suspicious circumstances. In some countries, however, these procedures have broken down or have been abused, particularly where the death may have been caused by the police, the army, or other government agents. In these cases, thorough and independent investigation are rare. Evidence that could be used to prosecute the offender is ignored or covered up, and those involved in the executions go unpunished. In addition, some investigative procedures may be inadequate because of a lack of resources and expertise or because of a lack of impartiality on the part of the investigating agency.

Human rights groups and others worldwide are using the *Manual* with increasing frequency to measure the adequacy of death investigations. The Oropeza murder presented exactly that type of situation which required an investigation strictly following the guidelines of the *Minnesota Protocol*. It is also a case where the information provided by the *Manual* can play a significant role in analyzing and judging the efficacy of the medicolegal investigation.

II. THE OROPEZA MURDER

The Minnesota Lawyers Committee has followed the Oropeza case closely for two reasons. The first is that the victim of the homicide was a popular newspaper columnist who was a vocal critic of corruption in the Mexican government and of the abuses by the security forces. The second is that the initial investigation into the homicide by state and federal authorities was poorly conducted and rife with allegations of illegal detention, torture, and coerced confessions. As such, despite the high visibility of the case and despite the government's public commitment to reform, the case exemplified the typical failings and continued abuses of the Mexican police and prosecuting authorities.

Brief descriptions of the victim, the homicide, and the investigation warrant the reader's attention so as to gain a full understanding of the case and the criticism which follows.

A. The Victim

Dr. Víctor Manuel Oropeza Contreras was born 31 January 1931 in Puebla, Mexico. He attended the National Polytechnical Institute of Mexico where he studied homeopathic medicine. He graduated in the mid-1950's and married in 1956. After graduation he returned to Puebla and entered private practice with his father. In 1960 Oropeza moved to Ciudad Juárez and established a prosperous practice in a small office.

Shortly after he moved to Ciudad Juárez, Oropeza helped organize the Popular Socialist Party in that city. He ran for mayor of Ciudad Juárez in 1964 on their platform. After frequent internal squabbles, however, he had to leave the party. He later helped form the Mexican Workers Party, but again he left the party for various reasons involving personality clashes.

In the early 1980's Oropeza decided to write. He

dismissed liberal politics as a waste of time because of all the intra-party squabbling. He began writing as a columnist for both the *Diario de Juárez* and the *Diario de Chihuahua*. His column, *A Mi Manera*, translates to English as "My Way", after the Frank Sinatra song of the same name. The column rapidly became popular and was closely followed in Ciudad Juárez and the Mexican community in El Paso. He wrote on all manner of subjects: from the environment, to the outbreak of cholera, to corruption in government. He took particular aim at heavy-handed police tactics. He would write two articles a day in his office between seeing patients.

When Ciudad Juárez became a major narcotics trafficking point in the mid-1980's, the police began to adopt very vicious methods of law enforcement. Oropeza's columns followed suit. After federal security forces began killing indigenous peasants in the Sierra Tarahumara, in the name of fighting drug trafficking, Oropeza strongly denounced the efforts as murder.

As the 1986 elections approached, Oropeza went on a hunger strike with Luis H. Alvarez, leader of the National Action Party (PAN), and Francisco Villarreal, a wealthy businessman. The purpose of the hunger strike was to promote democracy by demanding a clean election. Their efforts were highly publicized even though they received little attention from the local state-controlled television and radio.

Notwithstanding their efforts, the PRI party swept all the state offices. The hunger strikers alleged the election was a farce and decided to continue their hunger strike until they died. They were persuaded to resume eating by a friend and teacher named Heberto Castillo who convinced them not to give the government their lives in one payment but rather to continue to fight the government and give their lives in installments.

After the death of Oropeza's first wife in February 1987, his columns became even more acerbic and provocative. Through his column, Oropeza offended many people, including the Ex-Commander of the Federal Judicial Police in Chihuahua Elías

Ramírez and state governor Baeza Meléndez.

In the weeks before his death, Oropeza had been travelling throughout Mexico interviewing political candidates for articles in anticipation of the July elections. In the days following his death, the *Diario de Juárez* printed his old columns and then began printing a blank column outlined in black and entitled "*A Mi Manera*" with Oropeza's by-line above the empty space. The editorial page continues to carry his name at the top with the slogan "*Un Crimen Impune, una Justicia en Entredicho*" [An Unpunished Crime, a Questionable Justice].

Everyone spoke with during the visits by the Minnesota Lawyers Committee -- cab drivers and waiters included -- knew of Oropeza and applauded his efforts. Oropeza had become a symbol of human rights in Ciudad Juárez and Chihuahua. He seems no less so after his death.

B. The Homicide

When Oropeza had not come home by midnight on the evening of 3 July, his younger son, Alejandro, and his second wife, Patricia, went to his office to look for him. They discovered his body, stabbed to death, in a chair behind his desk and immediately called the police. The time was approximately 12:30 a.m. The state police arrived soon thereafter and began their investigation.

At the time of the Committee's visit to Ciudad Juárez, the murder scene remained intact, sequestered by Oropeza's sons. There were still blood stains on the wall next to the chair that are suggestive of arterial bleeding. On the wall opposite where he was lying there are splatters which are consistent with a knife attack. Absence of other signs of struggle -- none of the pictures and diplomas on the wall and none of the papers on the desk were disturbed -- suggests that Oropeza did not have the opportunity to put up much of a fight and that he likely was held at gunpoint during some or all of the assault.

The state police report characterizes the death as a probable homicide. The report describes 14 stab wounds and indicates a plastic bag was found in Oropeza's right hand, with several unidentified hairs, when the body was discovered. Human rights observers expressed alarm about the plastic bag because Mexican police agents commonly have used such bags as tools of torture, forcing the bags over their victim's head to achieve near asphyxiation.

The state police wrote this first report at 1:30 a.m. and conclude the time of death to have been 4 hours earlier, or approximately 9:30 pm. Taking into account the undisturbed order of things in the office, the report discards robbery as a probable motive.

C. The Investigation

The first police investigation, by the state judicial police, commenced at approximately 1:00 a.m., on 4 July 1991, when state agents arrived at the scene, took photographs, and dusted for fingerprints. They apparently found no useful prints. Forensic doctors conducted an autopsy later that morning at 8:30 a.m.

On Friday, 5 July, the Federal Attorney General's office ("PGR") announced it would participate in the investigation of the crime. The PGR's investigative team arrived in Ciudad Juárez on 6 July headed by special prosecutor Raphael Aguilar García. Their investigation began immediately with a wholesale detention of a large number of people loitering in the neighborhood around the doctor's office. The persons detained typically were shoe-shine boys, street vendors, car washers, and others associated with the nearby Juárez market.

Police detained Alejandro García the same day, without a warrant, and held him for four hours. They detained him again on the following two days for many more hours of questioning. When finally released, through the intervention of COSYDDHAC, he expressed concern about his cousin, Trinidad Holguín García, whom he said the police were beating in the holding

cells of the State Judicial Police.

Holguín García (known as "Güero Polkas") also alleges the beatings by police. He was the central suspect for the first five days of the PGR investigation headed by Aguilar. During that time the investigators characterized the murder as a "crime of passion." Other motives reportedly were not even considered. Police accused Holguín García of killing Oropeza in the aftermath of a homosexual lovers quarrel. Witnesses such as José Alfredo Muñoz Chico alleged that Holguín García had sexual relations with Oropeza and that he had heard Holguín García state he was going to "crush" [quebrar] Oropeza if he did not give him money. Muñoz Chico also claimed that Holguín García occasionally wore the kind of sunglasses found at the scene of the crime.[5]

Holguín García alleges not only that police tortured him to make him confess to the murder of Oropeza, but also that federal agents had several times in the past wanted him to confess to sexual relations with Oropeza. Ultimately, however, the homosexual liaison theory fell apart when Holguín García failed to verify the authenticity of the sexual affair and refused otherwise to corroborate the far-fetched police hypothesis. Another important witness to this version of events, who appeared with a black eye to make his statement, asked members of COSYDDHAC who were present not to leave because "they're going to beat me again."[6]

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[5] As reported by COSYDDHAC, Muñoz Chico later alleged he was beaten and bribed by police into making these statements. Muñoz Chico also alleges police wanted him to make statements against other defendants who are now in custody.

[6] Representatives of COSYDDHAC, at the request of the PGR, were present as observers at some of the interrogations and public statements of suspects in this case. The observers expressed a fear, however, that their presence would be used by the PGR to support the confessions of the defendants even though the observers concluded that undue pressure and irregularities had rendered the confessions inadmissible and

After the failure of the "crime of passion," police pursued other leads. According to sources at the PGR, the case against the defendants who are now in custody began with eyewitness descriptions of several young men seen leaving Oropeza's office on the evening of the murder. The alleged witnesses are a worker at a restaurant near the doctor's office, a custodian, the last patients at the office, and a couple who were walking past the office that evening.

These witnesses did not identify the defendants from photo or live line-ups, but provided police with descriptions of four young men seen near the doctor's office on the night in question. The last patients Dr. Oropeza saw on the day of the murder reported that when they left at about 8:00 p.m. there were four men in the waiting room. They say the descriptions of the current suspects do not fit their memories of the men. Based on those descriptions, however, the police eventually implicated the three defendants, two of whom are now in custody. All three are young men in their early twenties. All of them are relatively poor. The police have never explained the mysterious fourth person.

Police claim to have found Sergio Aguirre Torres on the basis of the witness descriptions. How they located him is still unclear. According to Aguirre Torres, the police detained him -- without a warrant -- on 10 July while he walked along a street in Ciudad Juárez. The police kept him locked up all that day and into the next afternoon. During that time, police gave him no information concerning any charges against him.

When the police began their questioning they asked if he had been downtown on 3 July. Aguirre Torres said no. The police told him someone had seen him there. Aguirre Torres maintains he was in El Paso with his mother that day. When he continued to affirm he knew nothing about any crime, Aguirre Torres asserts the police began to use torture. Initially,

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untrustworthy. The observations of the PGR, included as an appendix to this report, show that fear to be founded in fact.

they put a plastic bag over his head and hit him. Later they applied electrical shocks to his legs.

Whenever the police transferred him, as they occasionally did during his interrogation, he was put in the trunk of a car. They took him by the river on at least one occasion and told him "if you don't say you're guilty, we'll drown you." After three or four more torture sessions using the plastic bag, Aguirre Torres agreed to confess. At 11:00 p.m., on 11 July, they took him to a building by the river and told him "now you will tell everything that happened to the press."

Following the arrest of Aguirre Torres, police started looking for Marco Arturo Salas Sánchez, whom they claim Aguirre Torres implicated. Salas Sánchez is charged with having held Oropeza while still-at-large suspect Samuel de la Rosa Reyes stabbed him. Salas Sánchez's parents report the police came to their house at around 11:00 a.m. on 12 July and took the father with them to search for the son. The police returned to the house at 3:00 p.m. where they found and picked up Salas Sánchez.

The police told Salas Sánchez they were looking for the perpetrator of a rape and that the victim was in the car. They put Salas Sánchez in the car with two other state policeman before transferring him to an unmarked white Suburban typical of those now driven by federal police in Ciudad Juárez. He was told the police already had De la Rosa Reyes and Aguirre Torres and that he knew why they were seeking him. They put a gun to his leg, threatened him, and put a pistol in his mouth. They still did not inform him of any charges against him. Shortly after making the arrest, they took his tennis shoes.

Salas Sánchez says the police stretched him over a tire inside the vehicle and hit him repeatedly. Police sat on him and tied his arms behind him as he was lying across the tire. They told him they would stop if he would just say he was guilty. They then took his shirt and pants off, wrapped his arms behind him, blindfolded him, and took him to a hotel room. There, he reports, they continued to torture him with

kicks in the stomach, soda water forced up his nose, and a plastic bag over his head. Finally, they told him about Oropeza's murder and asked him how he had committed the crime. Salas Sánchez said he did not know. The police then asked about Aguirre Torres and told him they would continue to hit him until he got the story right.

Salas Sánchez eventually agreed that he and Aguirre Torres had done the killing. Police told him not to be a fool, however, and explained a different version of events they wanted him to adopt. They said Aguirre Torres had stayed in the car and that De la Rosa Reyes had done the stabbing while Salas Sánchez held the victim at gunpoint.

According to COSYDDHAC, the police initially charged Aguirre Torres and Salas Sánchez with murder in the course of a robbery. That motive, however, had already been discarded by the first police to arrive at the scene. Because nothing of any value had been taken from the victim's body or his office, and because there was plenty of value to take,[7] that theory quickly died.

Salas Sánchez reports he then made up the story that he and De la Rosa Reyes had broken windows in Oropeza's car several years ago, that Oropeza had turned them into the police, that one of them had done some time in jail for it, and that they had decided to kill him in revenge. After more questioning and torture, Salas Sánchez reports losing feeling in his arms before being taken at last to the federal judicial police office.

There he met special prosecutor Aguilar, who said Salas Sánchez could have foregone the torture if he had just confessed at the beginning. When Salas Sánchez replied he had confessed only because he was tortured, Aguilar ordered police to torture him again. About this time, the police came with

[7] Oropeza's gold watch was not removed from his body and 2,250,000 pesos (approximately US$750.00) in cash was left in his desk drawer.

clothes from his home and told him to choose what he had worn on 3 July. They told him to choose anything. The clothes he chose were put on display at the press conference that occurred on the evening of Friday, 12 July 1991.

Immediately before the press conference, Salas Sánchez again expressed reluctance to confessing. The police immediately took him by car to an area beneath a bridge and ordered him to confess. The police hit him some more and told him they were going to kill him using the "escape law" (shoot him in the back and claim he tried to escape). They told Salas Sánchez they would help him with his confession at the press conference.

There were two press conferences on 12 July -- one in the early evening at about 8:00 for Aguirre Torres' confession and the other in the late evening after Salas Sánchez had been convinced of his complicity. The PGR flew in reporters from Mexico City to be present for these media events. Aguilar stood next to the suspects in front of the television cameras. He spoke at length of the various reasons justifying the arrests and made a point that he was not fabricating the charges. The suspects appeared without legal counsel.

Salas Sánchez's parents showed Committee representatives the police sketches of Salas Sánchez and De la Rosa Reyes which allegedly were drawn from the verbal descriptions of witnesses. They are remarkably accurate and subtle for police sketches based on eyewitness descriptions. It is difficult to believe they were not done from photographs. The police had, in fact, picked up Salas Sánchez on at least one prior occasion, and he had been arrested with De la Rosa Reyes in El Paso for car theft. The Mexican police procured the mug shots from that arrest from the authorities in El Paso, and those photographs were shown at the press conference with Salas Sánchez.

Police claim Aguirre Torres implicated the other two suspects, but Aguirre Torres says he did not provide the police with descriptions of Salas Sánchez and De la Rosa Reyes. Salas Sánchez's name, moreover, mysteriously appears

on police reports several days *before* Aguirre Torres' arrest on 11 July.[8]

[8] *See* the petition for a writ of amparo prepared by Salas Sánchez's uncle Héctor Mario Salas Muñiz. Amparo No. I/1387/91, Juzgado Sexto de Distrito de Ciudad Juárez, Chihuahua (July 12, 1991).

III. ANALYSIS

A. The Legal Investigation

The Mexican government should have treated this case as one requiring the most thorough and impeccable of investigations. All aspects of the case -- the political history and public dissent of the victim, the lack of an ordinary motive such as robbery, the history of other assassinations of Mexican journalists and human rights advocates at the hands of Mexican security personnel,[9] and the public outcry for justice -- demanded a meticulous investigation by an impartial team of forensic professionals. The *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* ("*Principles*")[10] require that there be a thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions.[11]

Despite the importance and high visibility of the case, however, and despite the opportunity it presented for Mexican prosecuting authorities to demonstrate their commitment to professional, adequate, and legal investigations, the offices of both the state and federal Attorneys General failed again to carry out their constitutional mandate to pursue vigorous

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[9] The most salient and well-documented of recent cases are those of journalist Manuel Buendía and human rights lawyer Norma Corona Sapién. The police killing of journalist Hermalinda Bejarano in Ciudad Juárez in 1988 is an example much closer to the minds and hearts of citizens of northern Chihuahua. The Bejarano case, however, is more an example of gross police incompetence and cowardice, whereas the other two are documented cases of extra-judicial execution.

[10] *See Principles, supra* note 4. The same may be found in the MANUAL, *supra* note 3, at 44.

[11] *Principles, supra* note 4, at Principle 9.

prosecution of crime without violating basic human rights. The Mexican authorities once again reverted to the traditional, illegal methodology of arbitrary detention, torture, and deprivation of the right to counsel. They also demonstrated a lack of professional expertise.

1. The Evidence

Many observers familiar with the case consider the charges brought against the suspects now in custody to be palpably ridiculous and unfounded. The evidence upon which the prosecution brought the charges of homicide against the defendants, and which constitutes the basis for the deprivation of their liberty, is scant and problematic. It suggests an investigation of limited adequacy and sophistication.

According to Aguilar's press conference statements, the case against the defendants in custody was initially based on:

(1) The confessions of the defendants;

(2) Salas Sánchez's tennis shoes, alleged to match a print on the desk in Oropeza's office and which the police claim have bloodstains matched to the victim's blood;

(3) sunglasses found wedged between the body and the chair described as belonging to Salas Sánchez;

(4) the motive of "revenge" for Oropeza's having reported the Defendants years ago for breaking his car window; and

(5) the descriptions by alleged eyewitnesses used by the police to spot Aguirre Torres on the streets.

Concerning the confessions, they are now recanted,

alleged to have been coerced through torture, and hard to believe in any case. They are, moreover, inconsistent. Salas Sánchez, for example, stated at the press conference that the motive was robbery: apparently he lacked sufficient coaching.[12]

The shoe print on the desk, which allegedly matches Salas Sánchez's tennis shoe, was not noted in the initial police reports. Police experts, moreover, admit the crime scene had been contaminated by many persons. If indeed there were a shoe print, it could as easily have been left by one of the investigators, photographers, or journalists first on the scene.

Salas Sánchez and his family also deny there were any blood stains on the shoes at the time they were confiscated by police. More importantly, according to the new Commander of the Federal Judicial Police in Ciudad Juárez, there is no laboratory in Ciudad Juárez which could have matched the blood on the shoes with that of the victim between the time the shoes were taken and the time of the press conference some seven hours later.

The connection between the sunglasses and Salas Sánchez is unclear.

Regarding the motive of revenge, neither Oropeza's family nor the defendants confirm the truth of the window-breaking incident. The prosecutors, in fact, could present no police or court file, or any other evidence, to indicate any such incident ever even occurred.

The descriptions by the alleged eyewitnesses are highly problematic, and improbable, given the fact there was no reason for the witnesses to take any interest in the suspects at the time of the alleged sighting because none of the

[12] The observations of the PGR, included as an appendix to this report, claim the confessions are wholly consistent with each other.

witnesses knew or even suspected that a crime had been committed.

2. Prosecutorial Misconduct

Not only is the evidence tainted by police misconduct, and insufficient to support the charges, but the PGR also used it inappropriately as a media circus event, making a mockery of the whole process. Special prosecutor Aguilar presented the "evidence" and the accused to the public at two television press conferences before the suspects were even arraigned. Although the PGR had paid for a plane-load of journalists from Mexico City to attend, defense counsel apparently were not invited.

Aguilar also used the press conferences as a means to disparage Oropeza, characterizing him, among other things, as a homosexual. The unprofessionalism displayed by those gratuitous comments about the victim of a murder he was investigating needs no further comment. Regarding this unprofessional display, Morales Lechuga commented only that Aguilar was not properly trained in dealing with the press. In retrospective analysis, the Minnesota Lawyers Committee finds Aguilar's lack of training to be much more extensive.

Why Aguilar and his team of federal investigators were even involved in the case presented controversy in itself. Most homicides occurring in the state of Chihuahua are common state crimes (*delitos del fuero común*) investigated and prosecuted by state authorities. The federal authorities ordinarily would have no jurisdiction in such a case. This case was no exception.

Federal Attorney General Morales Lechuga explained that his office became involved because of early reports which suggested the involvement of federal agents in the actual

murder.[13] The PGR, of course, has jurisdiction to prosecute crimes committed by federal agents. Nonetheless, if Morales Lechuga truly suspected that federal agents were responsible for Oropeza's murder, he might better have left the investigation in the hands of the state authorities to assure a greater likelihood of an impartial investigation. Indeed, the *Principles* require "impartial" investigations conducted by persons who "shall be independent of any institution, agency or person that may be the subject of the inquiry."[14]

Special prosecutor Aguilar, however, who took great pains to document publicly all of his investigations into allegations of homosexual behavior and robbery, left no record of even having considered the possibility that the crime may have been committed by federal or even state agents -- despite the obvious motive and the documented cases of a similar nature in the past.[15] The Minnesota Lawyers Committee considers it more likely that the PGR quickly took over the case to *avert* an investigation into the obvious political motives or the participation of federal agents.

Shortly after the press conferences, Aguilar and the rest of the federal investigative team were called off the case. The locally-based federal police all have been reassigned to other scattered parts of the country. Morales Lechuga promoted Aguilar, for having so quickly "resolved" the case, to the influential position of delegate of the PGR to the

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[13] Morales Lechuga explained his office's involvement at the meeting in Washington, D.C., on 4 September. The PGR's observations on the draft report, included as an appendix, indicate that the state authorities invited their involvement in the case.

[14] *Principles*, *supra* note 4, at Principles 9 and 11. The same may be found in the MANUAL, *supra* note 3, at 44.

[15] *See supra* note 9.

state of Nayarit.[16]

In protest of the manner in which the PGR handled the Oropeza investigation, and the subsequent promotion of Aguilar, María Teresa Jardí Alonso, a well-known lawyer then working as human rights advisor to Morales Lechuga, resigned from her post at the PGR. In discussions with the Minnesota Lawyers Committee she characterized the Oropeza investigation as a "disaster."

B. The Medical Investigation

The first autopsy took place on the morning of 4 July 1991. That autopsy determined the cause of death to be loss of blood from the stabbing wounds (hypovolemic shock due to puncture-cut wounds in the thorax and abdomen). The external examination described twenty signs of violence manifested as an abrasion, various cuts, and numerous stab wounds, in the neck, chest, back, arm, thigh, and hands. The stab wounds were in the left side of his chest cavity and behind his left shoulder. The wounds on his hands appear consistent with an attempt to defend himself.

Despite the suspicious nature of the homicide, however, the first autopsy included no toxicological testing, no radiological examination, and no testing of any matter found under the victim's fingernails. The Model Autopsy Protocol section of the *Minnesota Protocol* characterizes radiological and toxicological examinations as among the most essential elements of a model autopsy,[17] and requires the performing physician to save fingernails and undernail clippings as

[16] It is reported, however, that Aguilar no longer represents the PGR because of his recent involvement in a drunken quarrel with the Commander of the Federal Judicial Police in Nayarit. State Judicial Police Agents were called in after the two drew pistols and began shooting.

[17] *See* the MANUAL, *supra* note 3, at 25, 27, and 33.

evidence.[18]

Dr. Frost describes such examinations as "routine" during the autopsy of *any* homicide victim. Radiological examinations are especially helpful for determining the existence of fractures in the wrists, ankles, or face which might be indicative of torture. Undernail scrapings may provide key evidence to help identify an aggressor. The fact that the first autopsy appeared to be quite limited, and the fact that it was performed by the same team of doctors who earlier had performed a flawed autopsy,[19] led family and other observers to question whether it had in fact been proper and complete.

A second autopsy was called for by the Minnesota Lawyers Committee, Oropeza's surviving family members, COSYDDHAC, and eventually the PGR. That autopsy took place on 12 September 1991. The second autopsy confirmed the findings of the first with only a few additional, non-substantial observations. The National Human Rights Commission ("CNDH") stated that the second autopsy confirmed the first to have been performed "honestly and professionally."[20]

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[18] *Id.* at 33.

[19] That autopsy was on the body of 19-year-old Juvencio Dante Morales Carrasco. He reportedly committed suicide while in the custody of the Mexican customs police on 25 December 1991. The first autopsy correctly attributed the cause of death to the hanging, but failed to mention significant evidence of torture revealed during the second autopsy. Federal Judge José Vargas Ruiz later found agent Gregorio Villanueva Cardona guilty of the crime of torture. It is reported that he received a three year prison sentence and a fine of 2,520,000 pesos. The prosecution is appealing the judge's acquittal of Villanueva Cardona on the charge of inducement of suicide.

[20] COMISIÓN NACIONAL DE DERECHOS HUMANOS, INFORME ESPECIAL DE LA COMISIÓN NACIONAL DE DERECHOS HUMANOS A LA OPINIÓN PÚBLICA DEL 25 DE SEPTIEMBRE DE 1991, at 47 (1991).

The Minnesota Lawyers Committee agrees that the state medical examiners committed no fraud or serious errors in the first autopsy. The Committee, nonetheless, views the first autopsy as inadequate because of the nature and exigencies of this type of case. Not only did the doctors fail to carry out routine and necessary examinations, as noted above, but they also failed to provide key medical information which might clarify facts at the crime scene. Blood spatters at the scene, for example, suggest an arterial bleeder, but the first autopsy does not confirm or contraindicate the external evidence. The second autopsy confirmed that the left axillary artery was damaged. Nor does the first autopsy comment on physiological signs which might confirm or contraindicate that Oropeza had been tortured with the plastic bag found in his hand.

Two pathologists from Mexico City performed the second autopsy. There were also many observers from the PGR, some of whom documented the autopsy with still and video cameras. The doctors performing the autopsy dictated their observations quite audibly. Both an audiotape recording and handwritten notes memorialized the proceeding.

Dr. Mariana Franco, a forensic pathologist from the CNDH, was at the side of the autopsy table observing, recording, and taking photographs throughout the autopsy. Her access to the body remained unimpeded throughout the proceeding.

Judge José Alberto Vázquez Quintero, however, through a uniformed state policeman, ordered Drs. Frost and Berho to remain at a distance not less than seven feet from the side of the autopsy table. This order precluded their observation of most of the actual wounds. They could, nonetheless, see all that transpired and hear everything said.

Drs. Frost and Berho concluded that the second autopsy was performed professionally, methodically, and thoroughly. The second autopsy reviewed all the findings reported in the first autopsy report, looking for any other injuries, and correlating wounds on the external surface of the body with wounds in the internal organs. No x-rays were taken.

The autopsy facility apparently had no x-ray equipment, had barely adequate lighting, had poor drainage from the autopsy table to the floor drain, had no ventilation or air-conditioning, and smelled very strongly with the odors of decomposition. According to Dr. Frost, it was a primitive facility and barely adequate for performing an autopsy. Considering that Ciudad Juárez is one of the largest metropolitan areas in Mexico, the Committee views these facilities with disappointment.

C. Judicial Antagonism to the Participation of Independent International Observers

The *Principles*, which have been adopted by the United Nations Economic and Social Council and endorsed by the United Nations General Assembly,[21] provide that "[g]overnments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject."[22] The *Minnesota Protocol* provides further, non-binding, guidelines to governments for establishing independent commissions of inquiry into suspicious violent deaths. One recommendation is that "investigators should have the power to seek help from the international community of experts in law, medicine and forensic sciences."[23]

Notwithstanding the provisions of these international instruments, the state judge presiding over the Oropeza case all but refused to allow the participation of international observers at the second autopsy. That judge, the Honorable José Alberto Vázquez Quintero, expressed only antagonism toward the U.S. and Argentine physicians who attended as

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[21] *See supra* note 4.

[22] *Principles*, *supra* note 4, at Principle 8; MANUAL, *supra* note 3, at 44.

[23] MANUAL, *supra* note 3, at 15.

independent observers.

Before sending Drs. Frost and Berho to attend the autopsy in Ciudad Juárez, the Minnesota Lawyers Committee respectfully requested permission from Attorney General Morales Lechuga, Inspector of the CNDH Jorge Madrazo, and Judge Vázquez Quintero. Counsel for the defendants also made a formal request before Judge Vázquez Quintero to permit the attendance of the doctors. And, of course, no request was made until permission already had been secured from Oropeza's family.

Madrazo, after consultation with CNDH President Dr. Jorge Carpizo, personally informed the Minnesota Lawyers Committee that its representatives were welcome to attend the autopsy as independent observers. Madrazo made it clear, however, that the CNDH had no authority to grant an "official" permission. The PGR, through its attaché at the Mexican Embassy in Washington, gave its formal, written approval for the attendance of a representative from the Minnesota Lawyers Committee. Thus, the victim's family, the defense, the prosecution, and the CNDH all approved of the international observers. Judge Vázquez Quintero stood alone in his disapproval.

What is more, Judge Vázquez Quintero waited until the day of the autopsy, at the graveyard, to inform Drs. Frost and Berho they were not welcome. In newspaper accounts which appeared that morning, the judge indicated he was denying the request for two reasons: 1) because a proper petition had not been made by one of the parties to the action; and 2) because the doctors had not provided him with documentation of their legal permission to enter Mexico.[24] Both reasons were baseless. Defense counsel had made a formal petition to the judge requesting permission for the doctors' attendance and both doctors carried their passports and Mexican visas with

[24] Diario de Juárez, September 12, 1991, at 1, col. 1.

them to the graveyard.[25]

Eventually, through the discrete, on-site petition of the PGR and COSYDDHAC, Judge Vázquez Quintero begrudgingly allowed the observers a limited participation. The Committee views it as very ironic that the judge, with a mandate to ensure respect for the defendants' rights, should need to be persuaded by the agency accused of violating those rights to allow the presence of independent observers from the international human rights community.

It is, of course, typical for governments to react defensively to criticism from the international community about human rights violations occurring within their borders. Government officials are, consequently, leery about international observers. Mexico, moreover, has traditionally been very proud and protective of its sovereignty and hard-won autonomy. Nonetheless, to its great credit, the Salinas administration recognizes that notions of sovereignty and autonomy do not relieve a state from its obligations under international law and has publicly pledged to work toward an end to the abuses. In the context of Mexico's international commitment to respect for human rights, Judge Vázquez Quintero's curious behavior toward international observers is even more paradoxical.

[25] The judge's concern about immigration documents was a mere smokescreen. Article 33 of the Political Constitution of the United Mexican States explicitly provides that the executive branch of government has exclusive control over such matters.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on its investigations, the Minnesota Lawyers Committee concludes that both the state and federal prosecuting authorities committed grave abuses of human rights in their investigations of the homicide of Dr. Víctor Manuel Oropeza. Considering the suspicious nature of the homicide itself and the political stature of the victim, the Committee also concludes that the Mexican investigating authorities have yet to take seriously the need for effective prevention and investigation of suspected cases of extra-legal, arbitrary, and summary executions.

The Minnesota Lawyers Committee commends the Mexican Government's acknowledgment of the abuses taking place within its borders and recognizes with guarded optimism the well-intentioned measures taken by the Government to rectify those abuses. The Committee remains very concerned, however, that reports of abuses in Mexico continue unabated and that agencies such as the PGR continue to conduct flawed and abusive investigations such as it did in the Oropeza case. Of equal concern is the perceived lack of will or power on the part of the Mexican judiciary to carry out its constitutional role in the protection of basic human rights and to enforce vigorously Mexican constitutional guarantees and international obligations.

As of the time of this writing, neither the PGR nor the state attorney general has issued any new findings on this case. Federal District Court Judge José Vargas Ruiz denied an Amparo petition of Salas Sánchez on 30 October 1991. Judge Vargas Ruiz, however, did not rule on the merits of the petition. He denied it on procedural grounds claiming that a previous appeal from the trial court's order of detention remained to be resolved. The defendants consequently remain incarcerated despite the abuses of their human and constitutional rights and despite the scant nature of the evidence against them.

The Minnesota Lawyers Committee recommends that both

Aguirre Torres and Salas Sánchez be released from custody, on bond if necessary, while a fresh team of well-trained, impartial investigators conduct an investigation *de novo* in strict conformity with the Mexican constitution and all international human rights standards, including the *Minnesota Protocol*.

The Committee does not know the status of any investigation into this case by the National Human Rights Commission. The Committee recommends that the Commission investigate the many allegations of abuses committed by state and federal agents during the course of their review of the Oropeza case.

The Minnesota Lawyers Committee also recommends that the PGR make public its own investigation into abuses by the federal and state agents. Such an investigation must be thorough and professional. Special prosecutor Aguilar and his assistants should be prosecuted for any abuses found to constitute crimes, and specifically for torture of the defendants in violation of Mexican law and the Convention Against Torture.[26]

The international human rights community vigilantly awaits an adequate resolution of all problems associated with this case. Dr. Oropeza, his family, and the Mexican people deserve no less.

[26] In its observations on this report, included herein as an appendix, the PGR claims to be conducting an investigation into the allegations of abuses committed by its agents. The Minnesota Lawyers Committee looks forward to reviewing the results of that investigation.

APPENDICES

A draft copy of this report was sent to Mexican Federal Attorney General Ignacio Morales Lechuga a week before publication. The Minnesota Lawyers Committee received, by facsimile transmission, the observations beginning on the following page from José Elías Romero Apis, Deputy Attorney General of the Northern Regional Office of the PGR. The observations are provided here exactly as received by the Minnesota Lawyers Committee.

The Minnesota Lawyers Committee did not translate the observations so as not to alter inadvertently their meaning or intent. For readers of this report who are not fluent in Spanish, the Committee notes merely that Deputy Attorney General Romero politely makes a few clarifications, including that: 1) the PGR was asked to participate in the case by the State (Chihuahua) Attorney General's Office; 2) the investigation and prosecution of the case are primarily the responsibility of the State Attorney General's Office; 3) the PGR's review of the case included the second autopsy and a review of the evidence; 4) it is for the judge, not the PGR or other prosecuting authorities to evaluate the weight of the evidence; and 5) the PGR is investigating the allegations of torture, but cannot make any comments on its investigation at this time.

This brief English synopsis does not, of course, reflect fully the comments made by the PGR.

Following the observations of the PGR are copies, in English and Spanish, of the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.

LIC. JOSE ELIAS ROMERO APIS
SUBPROCURADOR REGIONAL DEL NORTE
PROCURADURIA GENERAL DE LA REPUBLICA

México, D.F., a 1 . de diciembre de 1991.

Sr. Lic. DANIEL L. GERDTS,
COMITE INTERNACIONAL DE
DERECHOS HUMANOS DE LOS
ABOGADOS DE MINNESOTA,
P r e s e n t e.

Muy señores nuestros:

Tengo la instrucción del Procurador General de la República, licenciado Ignacio Morales Lechuga, de comentar a ustedes aspectos importantes de la participación de esta Procuraduría en la investigación del homicidio del Dr. Víctor Manuel Oropeza Contreras, en la revisión de dicha investigación y en la averiguación de presuntos delitos cometidos con motivo de tal indagatoria.

En dicha encomienda se refleja el deseo y la voluntad de la Procuraduría General de la República, y de su titular, de actuar con transparencia y con conocimiento de quienes puedan tener -por legitimidad o por solidaridad- interés en el esclarecimiento de hechos competencia de esta institución. Espero que las líneas subsecuentes sirvan para informar, para aclarar o para orientar sobre este asunto.

1.- La Participación de la Procuraduría General de la República.

En primer término, la Procuraduría General de la República participó en la investigación a solicitud de la Procuraduría del Estado de Chihuahua y dentro del marco del Acuerdo de Colaboración en materia de fiscalía que existe celebrado entre la Procuraduría y el Estado de Chihuahua.

Además porque se mencionó, de diversas maneras, la posibilidad de que miembros del personal de la Procuraduría fueren los autores del homicidio, en cuyo caso de persecusión del delito sería responsabilidad legal de esta fiscalía federal.

Ahora bien, correspondió a la Procuraduría General de la República la revisión de su participación en la investigación y de la posible responsabilidad oficial de sus servidores. Para dicha revisión, realizada a petición de los familiares del occiso y de diversas organizaciones comunitarias, se concertó la participación de los propios familiares.

No está por demás reiterar que no ha correspondido a la Procuraduría General de la República, sino a las autoridades de Chihuahua la responsabilidad básica de la investigación, de la consignación y del proceso, así como correspondería cualquier acción que tuviera como efecto la libertad de los inculpados.

2. La Revisión de la Investigación.

La Procuraduría General de la República, en cumplimiento de lo dispuesto por el último párrafo del artículo 3o. de su ley orgánica, ha participado en colaboración con las autoridades y los particulares interesados en el esclarecimiento del homicidio del doctor Victor Manuel Oropeza Contreras.

Dentro del mandato de la ley, corresponde al Ministerio Público Federal la vigilancia de la juridicidad y la procuración de justicia. Para ello debe orientar a los interesados sobre la atención que legalmente corresponde a sus asuntos, cuando su conocimiento y resolución compete a otras autoridades. Es esto en esencia, su atribución fundamental como promotor de los derechos del individuo y de la sociedad.

Sobre el particular se consideró que el procedimiento de una revisión como esta refiere elementos de alta complejidad. Para ello fué necesario revisar aquellos elementos con que se cuenta en el expediente procesal así como los elementos que no se encuentran en el expediente, pero que han constituído hipótesis que los familiares han deseado que se verifiquen y que se está procediendo a ello.

Existen otros elementos de naturaleza pericial que tuvieron que reconstruírse o verificarse por primera vez y que se relacionan primordialmente con la autopsia, con la mecánica de lesiones, con rastros hemáticos, con pruebas testimoniales, con la comprobación de diversas circunstancias y, desde luego, con la validéz y legitimidad de las confesiones de los inculpados que es una de las bases en que la fiscalía cimentó la acusación hoy re-

visada.

a).- La revisión de la autopsia.

Con motivo del análisis y verifi cación de las diversas hipótesis en cuanto al móvil ori- ginado por él ó los autores del homicidio, se vislumbró la posibilidad de la presentación de huellas de violen-- cia en el cadáver del occiso, por lo que se consideró ne cesario la diligenciación de una re-necropsia, para lo - cual se requirió el auxilio de la Dirección General de - Servicios Periciales de la Procuraduría General de Justi cia del Distrito Federal, cuya instrumentación se efec-- tuó bajo la supervisión del Doctor Rafael Moreno Gonzá-- lez con el auxilio de cuatro especialistas en esta mate- ria.

La exhumación del cadáver en el Panteón Recinto de la Oración en Ciudad Juárez, Chihuahua, se llevó a ca bo el pasado día 12 de septiembre.

En el curso de la misma se tomaron muestras or- gánicas de cabellos para ser analizados y se efectuó la segunda autopsia de adelante para atrás de pies a cabeza es decir meticulosamente en todo el cuerpo no obstante - de haberse encontrado en avanzado estado de putrefacción, elaborándose los exámenes correspondientes en la Procu- raduría General de Justicia del Distrito Federal de ca-- rácter químico toxicológico y de patalogía forense utili zando equipo y técnicas de nivel prestigiado de investi- gación.

En atención a lo anterior, hizo - suya la solicitud de los familiares del extinto Doctor - Oropeza, representados por su hijo el también Doctor Vic tor Manuel Oropeza Gutiérrez, para que se practicara la exhumación y una nueva necropsia que permitiera corrobo- rar o rectificar los resultados arrojados por la que se- practicó en su momento.

Para ello se solicitó al Ministerio Público del Fuero Común del Estado de Chihuahua que obtuviera del -- Juez Tercero de lo penal del órden común la autoriza--- ción para la práctica de la mencionada diligencia. A su vez, se propuso que esta fuese realizada por el equipo - pericial de la Procuraduría General de Justicia del Dis- trito Federal, que cuenta con una alta calidad y reconoci do prestigio, además de que en este caso resaltaba su im parcialidad. Se comisionó a los Doctores Jorge López Her

nández y Sebastián Guadalupe Castillo Medina y Juan Salgado Salinas, así como a los camorográfos y fotográfos forenses Fernando Méndez Silva y Juan Carlos Márquez - Madel. Además, estuvieron presentes como participantes ó como observadores testimoniales Victor Manuel y Alejandro Oropeza Gutiérrez así como Gloria Elia Anchondo de Oropeza y Gloria Oropeza Contreras, hijos, hija política y hermana, respectivamente, del occiso; la Doctora Margarita Fuentes Luna, patológa designada por la Comisión Nacional de Derechos Humanos, el Doctor en Derecho Enrique Guadarrama designado por la propia Comisión Nacional de Derechos Humanos; la Lic. María Dolores Hermosillo Maldonado, agente del Ministerio Público del Fuero Común, adscrita al juzgado de la causa; - los Licenciados Alfredo Herrera, Ramiro Cota y Ramón - Domínguez Perea, Coordinador de Procedimientos de la - Zona Norte, Delegado y Subdelegado en Chihuahua, respectivamente, por la Procuraduría General de la República.

Además, del grupo de ustedes asistieron el Doctor James Frost y la Doctora Mariana Berh, La diligencia estuvo presidida por el Juez Tercero de lo Penal, - Lic. José Alberto Vázquez Quintero, quien se opuso terminantemente a la presencia de los doctores Frost y - - Berh. No omito recordar que fueron los representantes - de esta Procuraduría quienes insistieron a ultranza y - lograron su presencia, tal como se los ofreciera el Procurador Morales Lechuga.

b).- La revisión de las pruebas.

Corresponde al juez de la causa determinar la solidéz de las pruebas que pretenden establecer la responsabilidad de los inculpados. Refiriéndome particularmente a la prueba confesional resulta idónea procesalmente en forma y fondo toda vez que se apega a los principios de inmaculación y de eficacia ya -- que fué rendida libremente, ante el Ministerio Público, con asistencia de defensor, en presencia de los familiares de la víctima, de periodistas y defensores de derechos humanos, y fué íntegramente videograbada. En cuanto al fondo son confesiones congruentes con las circunstancias del delito y coincidentes entre sí lo cual las convierte, además de confesionales, en testimoniales recíprocas.

La prueba circunstancial de la huella de un zapato tennis que quedó impresa en el lugar de los hechos y que se ha determinado pericialmente coincide con un zapato propiedad de uno de los indiciados que, incluso, contiene rastros hemáticos.

No corresponde a esta fiscalía federal la aportación ni la evaluación de las pruebas que dieron lugar la consignación y a la sujeción a proceso. Pero debo informar, como dato adicional, que el Juez ha sido más contundente que la fiscalía de Chihuahua ya que en el caso de uno de los indiciados, que fué consignado por encubrimiento, se le dictó formal prisión por coparticipación.

3.- La Investigación de la Tortura.

De muy diversas maneras se mencionó la posibilidad de que las confesiones de los inculpados hubieren sido obtenidas mediante tortura. La Procuraduría General de la República tomó la iniciativa y, a través de uno de sus fiscales, invitó personalmente a los inculpados a denunciar los hechos que consideraran pertinentes y poder iniciar la investigación correspondiente.

Los inculpados denunciaron el pasado 14 de septiembre ante el agente del Ministerio Público Federal de Ciudad Juárez, Chihuahua, que la aceptación del crimen que se les imputa fué porque fueron torturados por los agentes de la Policía Judicial Federal que los aprehendieron, iniciándose la averiguación previa número 638/91, contra quien resulte responsable por el delito previsto de la Ley Federal para Prevenir y Sancionar la Tortura.

Al efecto se han realizado diversas diligencias, tales como la declaración de los denunciantes, la inspección ocular del lugar de la detención, la declaración de empleados del hotel donde supuestamente estuvieron detenidos los denunciantes, la confrontación entre los denunciantes y sus aprehensores, la declaración del fiscal federal Rafael Aguilar.

LIC. JOSE ELIAS ROMERO APIS
SUBPROCURADOR REGIONAL DEL NORTE
PROCURADURIA GENERAL DE LA REPUBLICA

Otras diligencias están por desahogarse. En breve tiempo se arribarán a conclusiones de esta investigación de la que, para preservar su desarrollo, no se adelantan pormenores.

Con todo lo señalado con antelación, quiero poner de manifiesto, una vez más, el imperativo que el Licenciado Ignacio Morales Lechuga ha dispuesto para la Procuraduría General de la República, no sólo en cuanto al respeto y protección de los derechos humanos sino, también, en cuanto a su promoción.

Reciban ustedes mi consideración más distinguida.

PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such

practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

Investigation

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary and summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

PRINCIPIOS RELATIVOS A UNA EFICAZ PREVENCION E INVESTIGACION DE LAS EJECUCIONES EXTRALEGALES, ARBITRARIAS O SUMARIAS

Prevención

1. Los gobiernos prohibirán por ley todas las ejecuciones extralegales, arbitrarias o sumarias y velarán por que todas esas ejecuciones se tipifiquen como delitos en su derecho penal y sean sancionables con penas adecuadas que tengan en cuenta la gravedad de tales delitos. No podrán invocarse para justificar esas ejecuciones circunstancias excepcionales, como por ejemplo, el estado de guerra o de riesgo de guerra, la inestabilidad política interna ni ninguna otra emergencia pública. Esas ejecuciones no se llevarán a cabo en ninguna circunstancia, ni siquiera en situaciones de conflicto armado interno, abuso o uso ilegal de la fuerza por parte de un funcionario público o de otra persona que actúe con carácter oficial o de una persona que obre a instigación, o con el consentimiento o la aquiescencia de aquélla, ni tampoco en situaciones en las que la muerte se produzca en prisión. Esta prohibición prevalecerá sobre los decretos promulgados por la autoridad ejecutiva.

2. Con el fin de evitar las ejecuciones extralegales, arbitrarias o sumarias, los gobiernos garantizarán un control estricto, con una jerarquía de mando claramente determinada, de todos los funcionarios responsables de la captura, detención, arresto, custodia y encarcelamiento, así como de todos los funcionarios autorizados por la ley para usar la fuerza y las armas de fuego.

3. Los gobiernos prohibirán a los funcionarios superiores o autoridades públicas que den órdenes en que autoricen o inciten a otras personas a llevar a cabo cualquier ejecución extralegal, arbitraria o sumaria. Toda persona tendrá el derecho y el deber de negarse a cumplir esas órdenes. En la formación de esos funcionarios encargados de hacer cumplir la ley deberá hacerse hincapié en las disposiciones expuestas.

4. Se garantizará una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

5. Nadie será obligado a regresar ni será extraditado a un país en donde haya motivos fundados para creer que puede ser víctima de una ejecución extralegal, arbitraria o sumaria.

6. Los gobiernos velarán por que se mantenga a las personas privadas de libertad en lugares de reclusión públicamente reconocidos y se proporcione inmediatamente a sus familiares y letrados u otras personas de confianza información exacta sobre su detención y paradero, incluidos los traslados.

7. Inspectores especialmente capacitados, incluido personal médico, o una autoridad independiente análoga, efectuarán periódicamente inspecciones de los lugares de reclusión, y estarán facultados para realizar inspecciones sin previo aviso por su propia iniciativa, con plenas garantías de independencia en el ejercicio de esa función. Los inspectores tendrán libre acceso a todas las personas que se encuentren en dichos lugares de reclusión, así como a todos sus antecedentes.

8. Los gobiernos harán cuanto esté a su alcance por evitar las ejecuciones extralegales, arbitrarias o sumarias recurriendo, por ejemplo, a la intercesión diplomática, facilitando el acceso de los demandantes a los órganos intergubernamentales y judiciales y haciendo denuncias públicas. Se utilizarán los mecanismos intergubernamentales para estudiar los informes de cada una de esas ejecuciones y adoptar medidas eficaces contra tales prácticas. Los gobiernos, incluidos los de los países en los que se sospeche fundadamente que se producen ejecuciones extralegales, arbitrarias o sumarias, cooperarán plenamente en las investigaciones internacionales al respecto.

Investigación

9. Se procederá a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias, incluidos aquéllos en los que las quejas de parientes u otros informes fiables hagan pensar que se produjo una muerte no debida a causas naturales en las circunstancias referidas. Los gobiernos mantendrán órganos y procedimientos de investigación para realizar esas indagaciones. La investigación tendrá como objetivo determinar la causa, la forma y el momento de la muerte, la persona responsable y el procedimiento o práctica que pudiera haberla provocado. Durante la investigación se realizará una autopsia adecuada, se recopilarán y analizarán todas las pruebas materiales y documentales y se recogerán las declaraciones de los testigos. La investigación distinguirá entre la muerte por causas naturales, la muerte por accidente, el suicidio y el homicidio.

10. La autoridad investigadora tendrá poderes para obtener toda la información necesaria para la investigación. Las personas que dirijan la investigación dispondrán de todos los recursos presupuestarios y técnicos necesarios para una investigación eficaz, y tendrán también facultades para obligar a los funcionarios supuestamente implicados en esas ejecuciones a comparecer y dar testimonio. Lo mismo regirá para los testigos. A tal fin, podrán citar a testigos, inclusive a los funcionarios supuestamente implicados, y ordenar la presentación de pruebas.

11. En los casos en los que los procedimientos de investigación establecidos resulten insuficientes debido a la falta de competencia o de imparcialidad, a la importancia del asunto o a los indicios de existencia de una conducta habitual abusiva, así como en aquellos en los que se produzcan quejas de la familia por esas insuficiencias o haya otros motivos sustanciales para ello, los gobiernos llevarán a cabo investigaciones por conducto de una comisión de encuesta independiente o por otro procedimiento análogo. Los miembros de esa comisión serán elegidos en función de su acreditada imparcialidad, competencia e independencia personal. En particular, deberán ser independientes de cualquier institución, dependencia o persona que pueda ser objeto de la investigación. La comisión estará facultada para obtener toda la información necesaria para la investigación y la llevará a cabo conforme a lo establecido en estos Principios.

12. No podrá procederse a la inhumación, incineración, etc., del cuerpo de la persona fallecida hasta que un médico, a ser posible experto en medicina forense, haya realizado una autopsia adecuada. Quienes realicen la autopsia tendrán acceso a todos los datos de la investigación, al lugar donde fue descubierto el cuerpo, y a aquél en el que suponga que se produjo la muerte. Si después de haber sido enterrado el cuerpo resulta necesaria una

investigación, se exhumará el cuerpo sin demora y de forma adecuada para realizar una autopsia. En caso de que se descubran restos óseos, deberá procederse a desenterrarlos con las precauciones necesarias y a estudiarlos conforme a técnicas antropológicas sistemáticas.

13. El cuerpo de la persona fallecida deberá estar a disposición de quienes realicen la autopsia durante un período suficiente con objeto de que se pueda llevar a cabo una investigación minuciosa. En la autopsia se deberá intentar determinar, al menos, la identidad de la persona fallecida y la causa y forma de la muerte. En la medida de lo posible, deberán precisarse también el momento y el lugar en que ésta se produjo. Deberán incluirse en el informe de la autopsia fotografías detalladas en color de la persona fallecida, con el fin de documentar y corroborar las conclusiones de la investigación. El informe de la autopsia deberá describir todas y cada una de las lesiones que presente la persona fallecida e incluir cualquier indicio de tortura.

14. Con el fin de garantizar la objetividad de los resultados, es necesario que quienes realicen la autopsia puedan actuar imparcialmente y con independencia de cualesquiera personas, organizaciones o entidades potencialmente implicadas.

15. Los querellantes, los testigos, quienes realicen la investigación y sus familias serán protegidos de actos o amenazas de violencia o de cualquier otra forma de intimidación. Quienes estén supuestamente implicados en ejecuciones extralegales, arbitrarias o sumarias serán apartados de todos los puestos que entrañen un control o poder directo o indirecto sobre los querellantes, los testigos y sus familias, así como sobre quienes practiquen las investigaciones.

16. Los familiares de la persona fallecida y sus representantes legales serán informados de las audiencias que se celebren, a las que tendrán acceso, así como a toda la información pertinente a la investigación, y tendrán derecho a presentar otras pruebas. La familia del fallecido tendrá derecho a insistir en que un médico u otro representante suyo calificado esté presente en la autopsia. Una vez determinada la identidad del fallecido, se anunciará públicamente su fallecimiento, y se notificará inmediatamente a la familia o parientes. El cuerpo de la persona fallecida será devuelto a sus familiares después de completada la investigación.

17. Se redactará en un plazo razonable un informe por escrito sobre los métodos y las conclusiones de las investigaciones. El informe se publicará inmediatamente y en él se expondrán el alcance de la investigación, los procedimientos y métodos utilizados para evaluar las pruebas, y las conclusiones y recomendaciones basadas en los resultados de hecho y en la legislación aplicable. El informe expondrá también detalladamente los hechos concretos ocurridos, de acuerdo con los resultados de las investigaciones, así como las pruebas en que se basen esas conclusiones, y enumerará los nombres de los testigos que hayan prestado testimonio, a excepción de aquéllos cuya identidad se mantenga reservada por razones de protección. El gobierno responderá en un plazo razonable al informe de la investigación, o indicará las medidas que se adoptarán a consecuencia de ella.

Procedimientos judiciales

18. Los gobiernos velarán por que sean juzgadas las personas que la investigación haya identificado como participantes en ejecuciones extralegales, arbitrarias o sumarias, en cualquier territorio bajo su jurisdicción. Los gobiernos harán comparecer a esas personas ante la justicia o colaborarán para extraditarlas a otros países que se propongan someterlas a juicio. Este principio se aplicará con independencia de quienes sean los perpetradores o las víctimas, del lugar en que se encuentren, de su nacionalidad, y del lugar en el que se cometió el delito.

19. Sin perjuicio de lo establecido en el Principio 3 supra, no podrá invocarse una orden de un funcionario superior o de una autoridad pública como justificación de ejecuciones extralegales, arbitrarias o sumarias. Los funcionarios superiores, oficiales u otros funcionarios públicos podrán ser considerados responsables de los actos cometidos por funcionarios sometidos a su autoridad si tuvieron una posibilidad razonable de evitar dichos actos. En ninguna circunstancia, ni siquiera en estado de guerra, de sitio o en otra emergencia pública, se otorgará inmunidad general previa de procesamiento a las personas supuestamente implicadas en ejecuciones extralegales, arbitrarias o sumarias.

20. Las familias y las personas que estén a cargo de las víctimas de ejecuciones extralegales, arbitrarias o sumarias tendrán derecho a recibir, dentro de un plazo razonable, una compensación justa y suficiente.