
Lawyers Committee for Human Rights



THE AMERICAS

A DECADE OF FAILED PROMISES:

THE INVESTIGATION OF ARCHBISHOP ROMERO'S MURDER

MARCH 1990

(c) 1990 by the Lawyers Committee for Human Rights

All Rights Reserved

Printed in the United States of America

Lawyers Committee for Human Rights

Since 1978, the Lawyers Committee has worked to promote international human rights and refugee protection in the United States and abroad. The Chairman of the Lawyers Committee is Marvin E. Frankel; Michael H. Posner is its Executive Director; William G. O'Neill is its Deputy Director; and Arthur C. Helton is the Director of its Refugee Project.

Copies of this report are available from:

Lawyers Committee for Human Rights
330 Seventh Avenue, 10th Floor
New York, New York 10001

TABLE OF CONTENTS

Preface	ii
Introduction	1
The Murder	2
The Investigation	5
Chronology of the Investigation	11
The Investigation by the SIU	18
The Attempt to Extradite Saravia	20
The Dénouement	23
Conclusion	25

Preface

This briefing memo updates several previous Lawyers Committee studies of the investigation into the murder of Archbishop Oscar Arnulfo Romero. It also provides considerable new information on various aspects of the ten-year long investigative process. Previous Lawyers Committee reports that have focused, in part, on the Romero case are *Justice Denied* (March 1985), *Human Rights Dismissed* (July 1986), *From the Ashes* (April 1987) and *Underwriting Injustice* (April 1989).

This report was researched and written by Robert Weiner, a New York attorney. Mr. Weiner previously worked with Americas Watch in El Salvador from July to September 1987 and from September 1988 to January 1989. This report is based, in part, on the work he did for Americas Watch.

March 1990

Introduction

Ten years ago, Monsignor Oscar Arnulfo Romero, Archbishop of San Salvador, was shot in the chest as he said mass in a small chapel at the Divine Providence cancer hospital.

Archbishop Romero's murder deprived El Salvador of its most respected voice against increasing political violence, and it plunged the nation into deeper turmoil. It has been widely suspected that Romero's killers intended his murder to generate sufficient political instability to permit a successful coup attempt.

Archbishop Romero's status, coupled with the circumstances surrounding his murder, made the handling of his case a symbol of progress or lack of progress in the protection of human rights.

Ten years of bitter experience with incomplete investigations, failed attempts at prosecution and political manipulations of the judicial process signify that there has been little progress in establishing a rule of law in El Salvador.

One of the nations most involved in efforts to promote judicial reform in El Salvador is the United States, which has funded a multi-million dollar administration of justice program. In meetings with visiting delegations, including those from the Lawyers Committee, US officials have often cited the Romero investigation as one aided by US technical and financial assistance. Yet US officials conceded in December 1989 that the case was effectively closed without a single prosecution,¹ let alone conviction for any crime related to the murder. What follows is a brief history of the murder, its investigation, and the sadly negligible results obtained during a decade of failure.

¹As early as September 1988, both U.S. and Salvadoran officials suggested to the Lawyers Committee that with the chances of prosecuting the case in El Salvador so slim, the government's only option might be to "try it in the court of public opinion."

The Murder

On March 24, 1980, Monsignor Romero was officiating a mass to commemorate the first anniversary of the death of Sara Mierdi de Pinto, mother of Jorge Pinto Jr., the publisher of opposition newspaper *El Independiente*. The mass was celebrated in a chapel at the Divine Providence cancer hospital in San Salvador. Although the mass had been advertised in *El Diario de Hoy* and *La Prensa Grafica* that day, only about 20 persons attended. The mass began at 6:00 p.m. As it drew to a close, approximately 6:25 p.m., a shot was fired from -- as an autopsy would show -- the direction of the front door of the chapel. The bullet struck Monsignor Romero in the chest, and he fell to the floor, bleeding profusely from the nose and mouth.

Confusion ensued. Several people, apparently misapprehending the true target of the attack, rushed to the side of Jorge Pinto who, like many of those present, had thrown himself to the chapel's floor at the sound of the shot. Photographer Eulalio Perez, from the daily *El Diario del Hoy*, had prepared to photograph the Archbishop at the service's end; when the Archbishop was shot, Perez rose from his seat at the back of the chapel and began photographing the scene. During the seconds after the fatal shot, Perez also noticed, through the open front doors of the chapel, a vehicle leaving the area. However, as he told the National Police detectives who questioned him that night, from his poor vantage point on the chapel floor he could not distinguish any of the auto's details.

Several people present in the adjacent hospital complex ran to investigate the sounds they heard. Upon hearing the screams of another nun, Sister Maria del Socorro Iraheta ran across the street from the nuns' dining room to the chapel in time to catch a glimpse of a man leaning toward the interior of a car parked in front of the chapel; his arms were inside the car on the driver's side, as if, she thought, he were hiding an object.

The 13-year-old sacristy's helper, Pedro Enrique Lemus Slaguero, also heard a shot as he ate in a small room near the dining room. As he got up to look out a window facing the chapel's front entrance, he could see a car with a red roof leaving the scene at high speed. Two other nuns, Maria Avalos and Maria del Carmen Maria, ran from their dining area in time to encounter the group carrying Monsignor Romero out onto the street. Sister Avalos continued to the nun's office to advise the Mother Superior, Maria de la Luz Cueva, who had also been present at the mass. After rushing toward Romero, Cueva had run out the front door of the chapel and to her nearby office to notify a doctor.

Efforts to help the Archbishop at the scene were futile; he was carried outside, where one of those in attendance, Napoleon Martinez, helped carry the body to a pickup truck. Soon after arrival at the Policlínica Hospital, Monsignor Romero died.

The examining physician chose to perform an autopsy when he discovered that there was no exit wound. According to his autopsy report, the bullet entered the left side of the chest some six centimeters from the sternum, and followed a trajectory indicating that the shot came from the direction of the chapel's main entrance. The bullet's extensive fragmentation suggested that the projectile had been explosive; however, the small size of each fragment initially prevented a precise determination of the bullet's calibre. The large amounts of coagulated blood in the thoracic cavity, and the absence of heart and lung damage confirmed the doctor's initial conclusion that massive bleeding had been the proximate cause of the Archbishop's death.

Three days later, the judge assigned to the case, Dr. Atilio Amaya Jr., was visited at home by men claiming to have been sent by a good friend. Upon gaining entrance to the house, the two men ordered the judge and his housekeeper into another room. As the assailants began to draw their weapons, the fearful judge drew and began firing his own gun, forcing the two men to flee. Before they left, however, they fired several shots, one of which struck the housekeeper in the hip. They escaped in a white Peugeot model 104 which had been parked outside the

Amaya house. The license plates on their car had previously been issued to a white Toyota owned by a Gustavo Mejia Duarte of San Salvador. Neither the car nor the plates had been reported stolen. Judge Amaya soon fled the country.²

²See Americas Watch and American Civil Liberties Union, Report on Human Rights in El Salvador, (1982) at 102-103 for Judge Amaya's account of the attack.

The Investigation

After a brief effort by the National Police, the judicial investigation was carried forward by the Attorney General at the behest and direction of the Fourth Penal Court in San Salvador.

Beginning in 1984, two Salvadoran presidential commissions were formed and charged with investigating five human rights cases, including Archbishop Romero's murder. The first of these was widely known as the Cestoni Commission, taking the name of its director Benjamin Cestoni (it was known by US officials as the "Decree 15 Commission" in reference to the legislation which created it). The Cestoni Commission lasted a year before being succeeded by the Commission for the Investigation of Criminal Acts, formally created by ratification of Decree 58 on July 4, 1985. The new commission's Special Investigative Unit (SIU)³ performed the most important investigative work regarding the Romero murder.

The United States government did not carry out a formal investigation of the Romero murder for jurisdictional reasons: the case did not fall into the category of "Amcit" (American citizen) killings for which a specific legal mandate exists. For this reason the FBI declined several requests, including one from the US embassy, to conduct its own investigation. One news report from El Salvador noted that the FBI would provide some investigative materials to the Salvadoran government and cooperate in whatever way possible with El Salvador's investigation,⁴ but aside from this (and technical training provided to SIU investigators who would, in turn, work on the Romero case), the FBI played no comprehensive role in the case.

³Hereinafter, the Commission will be referred to by its investigative arm, the SIU.

⁴"FBI Investigates Assassination of Monsignor Oscar Romero," El Mundo, May 28, 1980.

While the US embassy also declined to launch a formal investigation, its political officers did develop informal and unusual contacts concerning the case. The most well-known result of these efforts was the location of a witness who described a meeting allegedly called by former military intelligence officer Roberto D'Aubuisson⁵ at which the participants drew straws to choose Romero's killer.

The CIA apparently commissioned an investigation, but its results were not released to congressional committees that were examining political violence in El Salvador, including the Romero killing.

The State Department received information concerning the case, including cables from its embassy. Over the years following the killing, State Department officials were often asked by members of Congress to respond to allegations such as those made by former US ambassador to El Salvador Robert White.

In addition to repeating the allegations made by the alleged witness to the selection of Romero's killer, White charged that he had received information that six wealthy Salvadorans living in Miami were financing death squad activities, including the Romero killing, run by Roberto D'Aubuisson. For the most part,⁶ at least until the 1984 inauguration of Christian Democrat Jose Napoleon Duarte as President, the State Department officials often stated that there

⁵Roberto D'Aubuisson is a US-trained graduate of El Salvador's military academy and former intelligence officer with ANSESAL, the Salvadoran national intelligence agency which operated out of the presidential office. D'Aubuisson has said that four days after the October 1979 coup that toppled the military government of General Romero, he left ANSESAL and was hired by the military high command to reorganize ANSESAL under the new military chief of staff's office, beyond the reach of civilians.

He attracted suspicion in early 1980 by making televised attacks -- filmed as he sat beside a stack of intelligence files -- against opposition figures he called subversives, some of whom were then murdered. With the approval of the Defense Minister José Guillermo Garcia and Vice Minister Nicolas Carranza, D'Aubuisson launched a similar videotaped campaign among the military which exhorted soldiers to be proud of fighting communists in the church and labor unions. Laurie Becklund, "Salvador Death Squads: Deadly Other War," Los Angeles Times December 19, 1983.

⁶Journalist Christopher Dickey reported in 1983 that the US government position on D'Aubuisson varied over the period from 1981 to 1984. In the fall of 1981, US officials, attempting to bring D'Aubuisson into the political process and recognizing a lessening of death squad activity after the murder of three US and Salvadoran labor advisors at the Sheraton Hotel in January 1981, were less likely to acknowledge a D'Aubuisson role in such activities. However, Dickey argued, by 1983, with resurgent death squad activity and in particular, after D'Aubuisson's public allegation that US-backed labor leader Samuel Maldonado was linked to the guerrillas, "Western diplomats" began confirming allegations of his role in political violence.

was no convincing evidence to support claims of D'Aubuisson's involvement in the Romero case or paramilitary violence generally.⁷ At times they would state that they had received intelligence reports concerning the Romero case which contradicted White's charges.⁸ Notwithstanding the State Department's assertions, the embassy sent a series of cables to Washington relating conversations with its Salvadoran source(s) on death squad activities. Three of these, sent between November 1980 and December 1981, describe the alleged meeting to choose Archbishop Romero's killer. Several "well-placed" US officials told reporters in December 1983 that the information in these cables would help unravel not only the Romero killing, but other death squad activities as well. However they knew of no follow-up investigation concerning this information by the State Department or the CIA.⁹ Congressional committees which attempted to investigate such allegations complained of incomplete cooperation from the State Department.¹⁰

Similar gaps in cooperation obstructed progress in El Salvador. Since the work of the SIU was often treated as confidential, no disclosure occurred until its evidence was suitable for presentation to a court. Two successive Attorneys General told Lawyers Committee representatives that they had no knowledge of the SIU's work until it turned over evidence to their office for inclusion in judicial proceedings. Interim reporting regarding the Romero case often went directly

⁷The State Department has also said that the FBI twice initiated investigations based on Ambassador White's allegations of Miami death squad financiers. The Department reported that the FBI was unable to develop any evidence upon which to base prosecutions (for violations of US law) against any of the Miami residents who were named. (Letter from Assistant Secretary for Legislative and Intergovernmental Affairs W. Tapley Bennett, Jr., to Rep. Lee Hamilton, March 5, 1984). Although congressional staff members who were very familiar with congressional efforts to investigate the activities of Salvadoran death squads confirmed that White's allegations were substantially correct, one aspect of his allegations which was subsequently challenged involved the naming of Arturo Muyschondt among the "Miami six."

⁸Letter from Assistant Secretary for Legislative and Intergovernmental Affairs W. Tapley Bennett, Jr., to Rep. Tom Tauka, April 11, 1984. One Congressional aide interviewed in 1989 recalled that the State Department said it had received some information which contradicted the story about the drawing of straws, although it appears that the Department did not reveal the exact nature of this information to Congress.

Roberto D'Aubuisson has consistently denied charges by White and those of political opponents in El Salvador. However, he told the Los Angeles Times in 1983 that in order to prevent leftist intimidation of judges investigating their crimes, "we began to act incorrectly and not take them to the judge but make them 'disappear' instead. Laurie Becklund, "Salvador Death Squads: Deadly Other War," Los Angeles Times, December 18, 1983.

⁹Laurie Becklund, "US Cables Reportedly Tie Salvador Right to Slaying," Los Angeles Times, April 13, 1983.

¹⁰See, e.g., letters from Rep. Clement Zablocki, Chairman, House Committee on Foreign Affairs to Secretary of State George Schultz, April 19, 1983 and February 8, 1984. One Congressional staff reported that the State Department would reveal only that information which it developed itself and not that which any other governmental entity shared with it. As a result, even unclassified information initially obtained by the CIA or the Department of Justice was not supplied by the State Department to members of Congress in response to their inquiries.

to President Duarte, while the Attorney General remained unaware of such developments -- at times to the detriment of his own endeavors. (See discussion at 33-34, *infra*).

Several other factors contributed to a low level of coordination among those Salvadoran and US offices with an interest in the case: the US, lacking a jurisdictional foundation for investigating, operated informally and/or through intelligence channels to obtain information; until at least 1984, there were no Salvadoran investigative entities willing and able to mount even a minimally effective effort. For several years following the murder, different segments of the US government were in open conflict over the strength of evidence developed, and the wisdom of its disclosure or utilization. And most importantly, the investigation's extreme politicization in El Salvador repeatedly pitted one branch of the Salvadoran government, loyal to Duarte's Christian Democrats and seeking political damage to rival Roberto D'Aubuisson, against others dominated by ARENA supporters.

The fate of documents seized from Roberto D'Aubuisson and an associate, Captain Alvaro Saravia, in 1980 illustrates the problem. On May 7, a week before the National Police suspended its investigation of the murder, troops loyal to the ruling junta (which included several leading Christian Democrats, including Duarte) arrested D'Aubuisson and approximately 20 others gathered at a farm outside San Salvador, for allegedly plotting a coup attempt. The soldiers seized from D'Aubuisson several documents -- apparently sufficiently damning that he reportedly tried to swallow them to prevent their capture¹¹ -- and from his associate Captain Saravia, a notebook containing the names of suspected death squad participants (including many military officers), numerous entries relating to weapons requirements. Among the documents was an outline of a

¹¹The documents in D'Aubuisson's possession included plans to meet with US congressional and executive branch members, apparently in an effort to obtain US support for the D'Aubuisson political project which became ARENA. In addition, there were lists which US diplomats believe reflected D'Aubuisson's intended post-coup cabinet.

"Plan Pineapple" thought to refer to the Archbishop's killing.¹² D'Aubuisson and the others were soon released from detention without prosecution.

Colonel Majano gave copies of the seized papers to Salvadoran junta leaders and to US Ambassador Robert White, who later submitted them to Congress and attempted to publicize their significance. White informed the State Department of the documents in a June 1980 cable, and provided the CIA station chief with copies.

In Salvador, distribution was limited. Salvadoran Attorney General Roberto Girón Flores said in early 1988 that his office did not have a copy of the Saravia notebook. President Duarte, he said, only gave a copy to the SIU in 1987.¹³

In the United States, White's efforts proved fruitless. The CIA failed to act on his request to carefully examine the documents; it could find no record of either the documents or an analysis of them, when questioned by congressional enquiries. The State Department opted not to utilize the documents they received. Deputy Assistant Secretary James Cheek informed a Congressional committee that he had suspected they were significant and assumed the CIA would review them, while the Intelligence Research and Interamerican Affairs Bureaus said that they had heard rumors of the documents' existence and were searching in vain for them.¹⁴

¹² Colonel Majano has said that the autopsy data later revealed that Romero had been shot by a rifle with precisely the same characteristics described in the Plan Pineapple notes. Miguel Buendia "Private Network" column in Excelsior (Mexico City, May 13, 1982).

D'Aubuisson later conceded to reporters that the Plan Pineapple notations -- a special night vision scope, .257 calibre weapon, four automatic pistols, grenades, one driver, four security men and one sharp shooter -- was used in "some confrontation, some firefight where his associates accompanied military personnel in an operation." He denied that that operation was the Archbishop's murder. Laurie Becklund, "US Cables Reportedly Tie Salvador Right to Slaying." Los Angeles Times, April 13, 1983.

¹³ Interview with Roberto Girón Flores, January 1988.

¹⁴ The documents, translated into English along with Robert White's testimony to the Senate Foreign Relations Committee, were published by the Committee in April 1981.

A congressional oversight committee noted in its 1982 report that "[d]uring the two years since their capture, these documents had been virtually ignored not only by policymakers, who felt they had no immediate use for them, but more importantly by the intelligence community.¹⁵

The documents were largely neglected until 1987, when an individual listed in the Saravia notebook returned to El Salvador to testify that Saravia and D'Aubuisson were involved in Monsignor Romero's killing. As a result of the attention focused by these allegations, the documents' numerous other clues to earlier violent activities¹⁶ came to light years after they first became available to investigators.¹⁷

¹⁵US Intelligence Performance in Central Americas: Achievements and Selected Instances of Concern," Permanent Select Committee on Intelligence, House of Representatives, 97th Congress (1982), at 13.

¹⁶Colonel Majano also said that another entry, containing a similar outline of equipment and personnel, corresponded precisely to that used in the execution of Christian Democrat Mario Zamora in February 1980. Id.

¹⁷See, e.g., James LeMoyné, "Picture of Death Squads Seen in Salvadoran Notebook," The New York Times, December 2, 1987.

Chronology of the Investigation

The judicial investigation was opened at 9:00 p.m. on March 24, 1980 by Judge Amaya immediately after he was informed of the Archbishop's murder. Shortly thereafter, the National Police launched an investigation of the case, only to abandon it six weeks later. Court documents reflect one of the major problems facing them: few if any witnesses were willing to speak openly with police agents.¹⁸ Memoranda from the chief detective in the investigation recount repeated failures to obtain information: at the chapel, the hospital, and at the offices of *El Independiente*.

Having discovered little more than that the Archbishop was probably shot from the front door of the chapel, that a vehicle may have been used, and that the judge had been attacked and then fled the country, the National Police turned over their files to the court and suspended the investigation in May 1980. The best clue they had -- the license plates of the car used in the Amaya attack -- didn't help, because they could not track down Mejia Duarte, the individual in whose name the licence plates were registered.

The Attorney General's office, or *Fiscalia*, was for some time no more enthusiastic or successful than its police predecessor. Neither Dr. Danilo Antonio Velado, the judge who replaced Amaya on an interim basis, nor his immediate successor Dr. Daniel Gonzalez Romero, played much of a role in the case, largely because the investigators brought few requests to them upon which they were to rule. When the *fiscales* renewed their investigation in November 1982 under a new judge, Dr. Ricardo Alberto Zamora Perez, they began by citing witnesses to the attack on Judge Amaya and trying to track down the individual whose auto license plates were used in that attempt. However, efforts to locate him and Amaya's injured domestic worker, which dragged on until late 1983, were unsuccessful.

¹⁸Witnesses may have had reason to distrust the security forces. On June 5, 1980, security forces raided the Catholic church human rights office Socorro Juridico and stole its files on the assassination. See Americas Watch and American Civil Liberties Union Report on Human Rights in El Salvador (1982), at 55-56.

By early 1984, the judge simply cancelled the citations for many of the elusive witnesses.¹⁹ At the same time he did order the appearances of several of the National Policemen who had initially investigated the Romero case. He later withdrew these orders with regard to all but one of the agents. The one who did testify, Mario Saul Merino Escobar, said only that he went to the chapel on March 24 with several other detectives including Lazaro Moreno. He said that they spoke with some nuns who told them that at the end of the mass Archbishop Romero fell to the floor and was bleeding. Escobar also testified that neither he nor other detectives went to the Polyclinic, because it was too crowded.

The 1984 Salvadoran presidential campaign returned the Romero killing, if not its investigation, to prominence. In March, ARENA candidate Roberto D'Aubuisson went on national television to present a videotaped confession by a self-proclaimed guerrilla defector calling himself Commander Pedro Lobo ("Peter Wolf") who claimed involvement in the planning of Archbishop Romero's assassination by leftist guerrilla commandos.

D'Aubuisson's presentation, made about one month after congressional testimony by former Ambassador White linking him to death squad activities, including authoring the Archbishop's murder,²⁰ was aimed at discrediting those charges, which had been echoed in El Salvador by his Christian Democratic opponent José Napoleon Duarte.

¹⁹One witness, Napoleon Martinez, disappeared in April 1981. His wife told his story to church workers in 1985: Arriving at the mass well after 6 p.m., he encountered an armed man outside the chapel, who ran off towards a red car parked nearby. About a week later, some men came to Martinez' jewelry store. They beat him and questioned him about the Romero case. Before the men left the store, they discovered the still blood-stained shirt he had worn as he was photographed carrying the Archbishop from the chapel.

According to one of the workers in Martinez' store, in April 1981 he and Martinez were blindfolded and taken from the store in a van by armed men in civilian clothes. The co-worker was later tossed out of the car alive, but Martinez never reappeared.

²⁰"The Situation in El Salvador," Subcommittee on Human Rights and International Organizations and on Western Hemisphere Affairs of the House Committee on Foreign Affairs, 98th Cong., 2nd Sess. at 46-51 (1984) (statement of Robert E. White, former US Ambassador to El Salvador).

D'Aubuisson also took pains to ensure that Lobo would be seen and heard by another audience apart from the Salvadoran electorate: days before the broadcast, he gave a copy which, he said, "fell into my hands," to US Ambassador Thomas Pickering.

Pedro Lobo's confession (which had earlier been reported in an interview published in the Costa Rican daily *La Nación*)²¹ failed to persuade its US audience. One US embassy dispatch concluded "[Mr.] Wolf is most likely crying wolf," his poorly choreographed performance "nothing more than a fabricated fairytale of the kind most favored by the right."

On the investigative front, José Francisco Guerrero, an ARENA member and former personal attorney to Roberto D'Aubuisson, was named Attorney General in mid-1984. Salvadoran and US officials have expressed suspicions that while in office, Guerrero fed information on the investigation to D'Aubuisson. Within months, having concluded that his investigators had no leads, Guerrero asked that the judge discontinue the investigation.

In 1985, under a new attorney general, Santiago Mendoza Aguilar, the office wrote to the judge asking that he order another citation for Gustavo Mejia Duarte (the owner of the license plates on the get away car used on the attack on Judge Amaya). The Attorney General's agents also wanted to verify reports that Jorge Pinto had left Salvador. Judge Zamora signed an order for the inquiry on Pinto (who had indeed fled years earlier) but refused to order any citations.

The judge's response to the request on Mejia Duarte is noteworthy: he reasoned that the Amaya attack and its subsequent investigation were totally separate from the Archbishop's assassination, and therefore that such a request was procedurally improper. While his view may be technically correct, SIU investigators on the Romero case obviously anticipated a relation

²¹Accounts of Pedro Lobo's story also appeared in Salvadoran newspapers. A story in *El Diario de Hoy* from February 6, 1984 based on the *Nacion* account, reported Lobo's claim that guerilla leaders Caetano Carpio, Melida Anaya and Joaquin Villalobos made the decision to eliminate Romero, and that a female agent from the terrorist group ETA impersonating a nun also participated in the scheme.

between the two incidents as they included the Amaya attack on their agenda for the Romero investigation.

Meanwhile, the Cestoni Commission, which had emerged in 1984 with a mandate to investigate Archbishop Romero's murder and four other human rights cases, had failed completely to carry out its task.²²

However, a group of National Guard investigators, including a former Cestoni Commission staff member, continued to carry out the investigation. It was this group that developed the testimony of ex-convict Adalberto Salazar Collier, who claimed to have dramatized the role of Pedro Lobo, the "rebel defector" touted by Roberto D'Aubuisson during the 1984 presidential campaign. Salazar turned up in the custody of the National Guard in mid-1985 asking for protection. He alleged he was coerced into "confessing" to a role in the Romero assassination on a videotape produced by right-wing Honduran businessmen, and Salvadoran, Honduran and Venezuelan military officers.

Imprisoned in late 1981 in Tegucigalpa on trumped-up charges by Honduran secret police, Salazar said, he was pressured by Honduran military officials to inform on political prisoners in detention with him. After several months, he was visited by a Salvadoran Army colonel, Ricardo Peña Arbaiza.²³ According to Salazar, Colonel Peña Arbaiza soon began training him to impersonate a guerrilla commander, and ultimately helped to obtain his release from prison and to get a job at the Honduran resort of right-wing businessman Peter Dumas. Soon after, with the help of Venezuelan Colonel Ivan Gonzalez, an interview was arranged with two journalists in

²²See From the Ashes: A Report on Justice in El Salvador (Lawyers Committee for Human Rights, 1987), at 14. The Commission apparently only seriously investigated one of the five cases in its portfolio, the Armenia well killings. While the Cestoni Commission reportedly interviewed witnesses and received documents, one embassy assessment noted no positive results or leads were developed by it before being phased out of existence in 1985.

²³Shortly before Salvadoran soldiers murdered four US churchwomen in December 1980, Col. Arbaiza, then a commanding officer in Chalatenango, threatened Ita Ford and Maura Clarke, who were working in that department. Ita Ford told her family that Arbaiza had called the sisters "subversives" because they were working with the poor. Justice in El Salvador, A report by the Lawyers Committee for Human Rights, reprinted in 14 Columbia Human Rights Law Review, at 207 (1983). See also Robert Armstrong and Janet Shenk, El Salvador: The Face of Revolution (South End Press, 1982), 175.

which Salazar was instructed to identify himself as guerrilla "Commander Lobo," and to admit to a role in the Romero murder.²⁴ Later, Salazar said, he was pressured into repeating the fiction on videotape. Within days of making the tape, he fled his home at the resort when unidentified men came looking for him.

Only after returning to El Salvador did Salazar discover that his videotaped statement had been presented on Salvadoran television by Roberto D'Aubuisson. He then decided to seek protection.²⁵

The significance of Salazar's testimony lies more in where it might have led rather than the criminal acts it actually described. At the time the evidence was brought forward in August 1985, US officials deemed it unlikely that, standing alone, it would result in any prosecutions directly related to Romero's murder. They were right.

Salazar was actually in custody as early as May 1985; however, the investigators, working behind the scenes, made extended attempts to corroborate his story before going public. Despite much success in corroborating important parts of Salazar's story, no prosecutions arose for any crimes even indirectly linked to the killing.²⁶

Venezuelan Colonel Ivan Gonzalez readily admitted arranging for two journalists to interview Salazar whom he identified from a photograph the investigators showed him in

²⁴According to Salazar's testimony to the National Guard, he was interviewed in early 1984 by a Costa Rican journalist named Orlando Gastro and an unnamed Venezuelan journalist. As noted above, the Costa Rican daily La Nación ran an interview with Lobo in 1984.

²⁵Other sources state that Salazar was arrested by the National Guard for theft of a motorcycle, and that he told his story to his interrogators.

²⁶Salvadoran law (Penal Code, arts. 470-471) defines as crimes acts which prevent the administration of justice or the falsification or destruction of evidence. However, there appears to have been little thought given to legal action against any Salvadorans involved in the coverup scheme, e.g., Col. Peña Arbaiza. One obstacle to a prosecution of this nature concerns the rule in Salvadoran law which bars testimony by participants in a crime against their criminal partners. Although Salazar may not have realized the use to which his video was ultimately put, he did play the role assigned him, with knowledge that the events he was describing were untrue.

A further question is whether a finding of coercion would void any accomplice status and permit Salazar to testify. Although this might seem logical, it is not clear on the face of Salvadoran law that such a result would obtain.

Tegucigalpa in late 1983 (although denying knowledge of Salazar's forced transformation into Lobo).²⁷ He recalled that a Captain Glass of the American embassy had first introduced them. Peter Dumas, the wealthy businessman who, the investigators confirmed, hired Salazar for his resort hotel, denied knowing Salazar and rejected all of Salazar's allegations.

Rafael Nodarce, the owner of a Honduran television station, personal friend of Honduran General Gustavo Alvarez Martinez and a man who claimed to have close ties to the United States intelligence community, denied personal contact with Salazar. (Salazar had named him as the cameraman for the Lobo video). However, Nodarce had seen Salazar's name in an intelligence bulletin which he said the US embassy apparently had sent to him on a regular basis. In addition, he said, an American friend had told him that a polygraph test on Salazar indicated that he had no role in the Archbishop's murder. Nodarce apparently told Salvadoran investigators that he heard nothing more of Salazar until he witnessed a military friend of his (Nodarce's) order a hit squad to Peter Dumas' resort to "disappear" Salazar on orders of "a general."²⁸

Of particular interest was a remark made by Colonel Arbaiza to investigators that they should look "higher," an apparent reference to involvement of his military superiors in either the Lobo project or the Romero murder or both.²⁹ On this basis, they contacted Colonel Contreras, former head of the Salvadoran National Intelligence Unit (ANI).

Investigators On Colonel Arbaiza's advice that Salazar had useful information on subversives, Contreras said he provided official help in securing Salazar's release from a Honduran prison so that he could lead them to a leftist safe house in Guatemala. Contreras indicated that

²⁷Salazar told investigators that he didn't think Col. Gonzalez was aware his Lobo story was a hoax.

²⁸The "general" was possibly Honduran General Bali Castillo, who ran, according to Nodarce, a special "mop-up" group with Honduran Major Alexander Hernandez. Salazar told investigators that Hernandez first sent Col. Arbaiza to him. Hernandez has been named by human rights monitors and defectors as the commander of Battalion 316, a reputed military intelligence death squad unit said to be responsible for numerous killings in the 1980s. See Human Rights in Honduras: Central Americas 'Sideshow', Americas Watch (May 1987).

²⁹Col. Arbaiza also denied having any reason to help Roberto D'Aubuisson.

they successfully located the safe house,³⁰ but that he didn't know what subsequently became of Salazar. The investigators were apparently satisfied with this explanation.

There apparently was no further examination of the possibility that some people in El Salvador's Military High Command knew about Salazar's role in the Lobo tape. Salazar had testified that after Colonel Arbaiza arranged his release from prison, Arbaiza took him to the High Command headquarters to see a uniformed official, who arranged a safe house for him in Escalon, a wealthy San Salvador neighborhood. In addition, during Salazar's trip to Guatemala with Arbaiza to help locate the leftist safe house, Salazar stated that at one point he was taken to the US embassy in Guatemala. At the embassy he apparently met two of the individuals who had supervised him in the safe house in Escalon and who were responsible for helping him to impersonate an ex-guerrilla commander.

Meanwhile, the court's investigation continued to move slowly. It was late 1985 before the authorities began obtaining declarations from other nuns at the murder scene, Sisters Maria Avalos, Teresa Alas, and Soccoro Iraheta. Sisters Alas and Avalos reported nothing, but Iraheta testified that as she crossed the street in front of the chapel where Romero lay dying, she saw someone leaning over the open window of a car as if he were hiding something within it. She got a look at him from a distance of about five meters as he turned to face her, although she stopped only momentarily before continuing to the chapel. It wasn't until the 1982 election campaign, she said, that she realized that candidate D'Aubuisson's face was that of the man she had seen that day.

In May 1986, the *Fiscalia*, once again headed by Jose Francisco Guerrero, announced that its investigation of the Romero case was closed.

³⁰This differs from Peña Arbaiza's 1986 court declaration in which he said that Salazar's claim to know about the safe house proved false. Contreras also contradicted Peter Dumas' claim that he never knew Salazar.

The Investigation by the SIU

Beginning in January 1986, the SIU followed an approach similar to that taken for routine homicide investigations: scanning the crime scene; interviewing witnesses to the act or escape; attempting to establish motive and modus operandi; retracing the victim's last hours; questioning those close to the victim for information on enemies and/or recent threats; and, because of the particular developments in the case prior to the SIU's creation, investigating the attack on the presiding judge Amaya, and examining the cover-up allegations by Salazar.

By the time SIU's detectives began their work, the trail they had to follow was already muddied by the passage of time, previous investigators, and witnesses' fear of reprisals. At their disposal were those statements previously given in the case. In many instances, the investigators were thus repeating steps that had already been taken, some of which appeared unlikely to generate useful information. Certain areas received more attention than appeared to be warranted while others, such as the possible involvement of military officers at the High Command in the creation of Pedro Lobo, received very little.

Investigations into the attack on Judge Amaya tied the judge's problems to the first day of his involvement in the Romero case. Judge Amaya's son recalled that on March 25, 1980 a call was placed to the judge's home. The judge's daughter answered and an unidentified man asked her what color funeral shrouds the judge preferred. The following day, another anonymous caller threatened to kill the entire family. On March 30, the son himself received a death threat; ten days later his law office was burned down.

The detectives did track down Mejia Duarte, to whom license plates on the car used in the attack on Judge Amaya had been issued. Neither his car, a white Toyota pickup, nor the plates had ever been stolen. However, in early 1980 he took the car to a repair shop in San Salvador.

At one point, he went to the shop to check on the car but was told that it had been taken out in order to purchase some additional parts. There is no further explanation of where the car or its plates were during this time.

The SIU's biggest success involved locating and obtaining the testimony of Antonio Amado Garay, who said he had chauffeured a single assassin to and from the crime scene at the behest of Captain Saravia. Garay, a former driver for Saravia and one of those arrested with D'Aubuisson in 1980, also swore that he overheard Saravia reporting back to D'Aubuisson after the killing that the mission had been accomplished. According to Garay, D'Aubuisson responded that Saravia had acted too soon, while Saravia replied that he had done as D'Aubuisson had ordered. As soon as Garay could be brought from Costa Rica to El Salvador for testimony,³¹ President Duarte held a dramatic press conference. Invoking the memory of his inauguration day vow at Romero's tomb to punish the culprits, he now claimed to have honored his pledge by solving the case.

On the basis of Garay's testimony, Judge Zamora ordered the arrest of Captain Saravia on charges of aggravated homicide.

³¹ Another declaration was made public by the Fiscalia in late September 1987. Gloria Kahan Guzman that she was a friend of Colonel Mauricio Staben when Staben was the second in command at the local cavalry barracks. One evening, she said, she was visiting with him and Lopez Sibrian at the barracks when a somewhat inebriated Staben showed her a telescopic rifle he claimed was used to kill Archbishop Romero. Staben was one of those arrested with D'Aubuisson in 1980, and a member of the network outlined in the Saravia notebook.

Kahan Guzman had made these allegations eighteen months earlier during testimony against military officers accused of kidnapping wealthy businessmen in the guise of leftist guerrillas and extorting huge ransoms. Staben was clearly implicated in the scheme, but his prosecution was halted by powerful friends in the Salvadoran army.

Kahan's testimony that her home was chosen for construction of a clandestine dungeon to hold kidnap victims was demonstrably true. US embassy cable traffic indicates that polygraph examiners confirmed the truth of her remarks in the Romero case. Under the circumstances, this allegation should have received close attention. It did not.

The Attempt to Extradite Saravia

Armed with the judge's arrest order and an extradition request from the Foreign Ministry, the Government of El Salvador requested extradition of Captain Saravia, who had been recently arrested in Miami on immigration charges.

In the United States District (Southern District of Florida) court in Miami, things went well for US attorneys fighting, on the basis of Garay's testimony, to get a certificate of extraditability and order of extradition from US Magistrate Linnea Johnson.

Saravia's defense attacked Garay's credibility; charged that Garay, as an accomplice to the crime, was incompetent to testify; claimed that the *juez ejecutor*, responding to a habeas corpus petition brought in Salvador on behalf of Saravia, had already voided the arrest order against him;³² and proffered the statement of a prisoner in San Salvador that he, not Garay, had driven Romero's killer to the chapel, and that Saravia (and hence D'Aubuisson) had nothing to do with the murder.³³

Magistrate Johnson accepted the testimony against Saravia as sufficiently credible to support the extradition request, and declined to consider Salvadoran legal obstacles to accomplice testimony, leaving that issue for Salvadoran courts to determine when Saravia came before them.³⁴

³²In habeas petitions of this nature, the Salvadoran Supreme Court appoints an acting judge from the bar, known as a *juez ejecutor*.

Saravia's counsel were able to produce a FAX copy of the *juez ejecutor*'s opinion almost immediately. In fact, according to remarks by Supreme Court President José Francisco Guerrero to a September 1988 delegation from the Lawyers Committee for Human Rights, the release of this opinion was so early as to violate certain judicial protocols for disclosing opinions. The opinion was apparently FAX to Miami from a D'Aubuisson office.

³³"Respondent's Supplemental Pre-Hearing Memorandum in Opposition to Extradition," at 3-7, In re: Extradition of Alvaro Rafael Saravia Case No. 87-3598-Civ.

³⁴ In extradition proceedings in the United States, the issue of whether a witness' statements are admissible is governed by the law of the United States, not that of the nation requesting extradition.

She accepted the Salvadoran government's diplomatic note explaining that the *juez ejecutor's* opinion was merely advisory, and did not invalidate any judicial action pending against Saravia. The court also specifically stated that it had considered the facts and circumstances upon which the *juez ejecutor* relied in finding Garay's testimony incredible. Unlike the *juez ejecutor*, the US Magistrate saw in them no reason to reject his testimony. Lastly, the magistrate rejected as unworthy of belief the claims of the prisoner Graciano de Jesus Rivas Romero, offered by Saravia in his defense.

However, in December 1988 the Supreme Court of El Salvador subsequently adopted the *juez ejecutor's* position and noted that the arrest order and extradition request were invalid. US sources and press accounts³⁵ indicate that Francisco José Guerrero (who bore no relation to the former Attorney General) advised Salvadoran officials that the Foreign Ministry should initiate the extradition request, and then, in his capacity as the President of the Supreme Court, helped decide that the Foreign Ministry lacked the authority to make such a request. In addition, the Court found that Garay's testimony was stale and contradicted that of another witnesses.³⁶ As a result of the Supreme Court's action, the charge of aggravated homicide of Monsignor Romero was dropped³⁷ and Saravia was freed on \$10,000 bail (due to unrelated immigration charges pending against him).

Furthermore, the question of admissibility (in this context, related to whether Garay was an accomplice as a matter of law) and that of credibility (regardless of his status, whether Garay was telling the truth) are treated in US courts as separate inquiries. Both were resolved in favor of the US government's position.

³⁵Jefferson Morley, "Demonizing D'Aubuisson," The Nation, May 8, 1989.

³⁶The "other witness" was Divine Providence nun Sister Maria del Socorro Iraheta, who had claimed that the man she saw standing next to a vehicle outside the chapel was Roberto D'Aubuisson. Inside the car, she said, there were at least two other men. According to Garay only the assassin traveled with him. The nun's testimony failed to generate any orders of detention at the time it was given. Yet, years later, the Supreme Court saw in it a basis for rejecting Garay's allegations.

³⁷Saravia is also implicated in another serious crime in El Salvador, the 1985 kidnapping and disappearance of Carlos Guerra Campos. Campos' family apparently paid a large ransom to the kidnappers but Campos was never heard from again. While this crime could form the basis for another extradition request if the government could establish probable cause that Saravia is guilty of participation, it would do nothing to surmount the legal obstacles posed by the Supreme Court's ruling on the Romero case.

In late December, the ARENA majority in the Legislative Assembly voted -- with other parties abstaining -- to oust Attorney General Roberto Girón Flores for incompetence and fraud in the Romero and other cases. Deputy Roberto D'Aubuisson asserted that the Attorney General had conceded in a closed-door session that Antonio Garay was actually a false witness.³⁸ In a Lawyers Committee interview, Girón Flores emphatically denied the charge, accusing D'Aubuisson and ARENA presidential candidate Alfredo Cristiani of deliberately distorting his remarks. Girón Flores said he had told the legislators that another individual -- Saravia defense witness, Graciano de Jesus Rivas Romero, who made jailhouse claims of knowledge about Romero's killers -- was clearly lying.³⁹

Observing that the case only progressed during electoral campaigns, Judge Zamora told the Lawyers Committee in January 1989 that the case is still open, based on the testimony -- recorded some four years ago -- of the nun, sister Iraheta. The Attorney General, the late Dr. Roberto Garcia Alvarado, said in early January 1989 that "the assassination of Monsignor Oscar Arnulfo Romero is not closed as the Church and the Department of State of the United States have expressed."⁴⁰ But, by ruling that Garay's evidence is too old, the Supreme Court has set a precedent for courts to throw out later testimony in the case on the same grounds.

³⁸La Prensa Grafica, December 23, 1988.

³⁹Lawyers Committee interview, Roberto Girón Flores, January 11, 1989.

⁴⁰La Prensa Grafica, January 4, 1989.

The Dénouement

On February 5 and 7, 1989, a little more than a month before presidential elections in El Salvador, the Salvadoran government preempted television programming on all stations to air two videotapes laying out its case against Roberto D'Aubuisson, whom they named the intellectual author of the crime, Rafael Alvaro Saravia, who they say planned the killing, and Dr. Antonio Héctor Regalado,⁴¹ whom they named publicly for the first time as the triggerman. Known as "Dr. Death," Regalado is the dentist from Santiago de Maria who in the early 1980's ran his own death squad disguised as a boy scout troop.⁴² According to the videotape, Garay chose Regalado from among the sketches of three men, identifying him as the man he knew to have shot the Archbishop. The government's case was built on evidence collected by the Special Investigative Unit; this evidence was turned over to the court on February 10.

On February 10 and 12, ARENA purchased television time to present two 45-minute video tapes in which Roberto D'Aubuisson emphatically rejected the government's accusations. On February 24, Justice Minister Julio Alfredo Samayoa requested that the Legislative Assembly hold pre-trial hearings on the involvement of Roberto D'Aubuisson in the murder of Archbishop Romero. Before D'Aubuisson could stand trial the Assembly would have to find just cause, and strip him of his parliamentary immunity.⁴³

With ARENA's victory in the March 1989 presidential election, investigative activity against Roberto D'Aubuisson ceased. As the months leading up to the 10th anniversary of Archbishop Romero's murder passed, hopes of a successful prosecution faded further. One church

⁴¹Regalado is not the person named by the US embassy's source in 1980 as the assassin.

⁴²The Washington Post, August 29, 1988. According to one news report, Regalado, once D'Aubuisson's personal security advisor, is believed by US authorities to be behind the spring 1984 plot to kill US Ambassador Thomas Pickering. See Craig Pyes and Laurie Becklund, "Inside Dope in El Salvador," The New Republic, April 15, 1985.

⁴³El Mundo, February 24, 1989; Radio Cadena YSU, February 24, 1989, as cited in FBIS LAT-89-040, March 2, 1989.

official responded, "We do not like to say 'never' in a case of this importance. But we are getting closer and closer to the point where we cannot avoid it."

Conclusion

Because of Monsignor Romero's national and international stature, his murder may have, ironically, provided one of the best opportunities to expose and prosecute fundamental sources of El Salvador's political violence. The attention and resources devoted to the investigation dwarf that available and expended for others; a successful prosecution here should have been possible where others were not. The system's failure in this case is reassuring to those who contemplate political violence in the future. It leads them to conclude that if even the Archbishop's killers escaped prosecution, almost certainly they will never face the consequences of their crimes.

And so it has been for ten years and more in Salvador; until 1989 no military officer had ever been detained for the murder of a civilian;⁴⁴ few, if any, persons, military or civilian, have been prosecuted for human rights violations. During this period the justice system, of singular importance in establishing a society committed to the rule of law, has failed where it was most crucial that it succeed.

To be sure, the circumstances under which Salvadoran officials must perform their functions are (and have long been) extraordinarily difficult. This case was no exception. However, the failures here are no less personal than structural. They can be laid to a lack of civilian leadership in two mutually reinforcing forms: the dominance of partisan politics over broader societal goals, and the unwillingness or inability of Salvadoran political leaders to risk challenging the Salvadoran armed forces which have long been dominant in Salvadoran affairs.

⁴⁴In 1989 a major and several soldiers were charged and held in connection with the murder of 10 civilians in the village of San Francisco. In early 1990, a colonel and three lieutenants were charged in connection with the killing of six Jesuit priests, their housekeeper, and her daughter at the University of Central America in November 1989. Both cases are still pending.

The SIU's effort, which by its count included 238 interviews and 21 judicial declarations, was determined but much too specific. The tasks set forth as the basis of the investigation included a number of inevitably redundant steps. What it did not appear to include were steps to carefully examine the possible official (i.e., military or security force) involvement in or knowledge of the assassination plotter cover-up attempts, despite the confrontational position which Monsignor Romero had publicly assumed regarding official complicity in human rights abuses -- and despite indications in that direction arising out of the evidence developed. Unfortunately, the same can be said for other pieces of the investigation performed by other entities.

Indeed, the leads followed were almost exclusively those pointing to Roberto D'Aubuisson and/or his associates. (It should be recalled that the SIU's investigation began after the well-publicized allegations by former ANSESAL director Roberto Santivañez,⁴⁵ which implicated, among others, then Director of the National Guard Col. Eugenio Vides Casanova, who later became Minister of Defense under President Duarte). To be sure, a failure to investigate information suggesting D'Aubuisson involvement, and the manner in which D'Aubuisson subsequently utilized the fraudulent Pedro Lobo video, would be to overlook readily apparent connections. However, other leads have also demanded attention which they have not received. Even a central focus of the investigation -- the allegations of Salazar Collier -- avoided particular attention to his testimony's clear indications of possible military connection to the coverup attempt.

Duarte's desire to build a case against D'Aubuisson may have had the opposite effect. US and Salvadoran sources concur that Duarte may have hurt the chances of vital additional evidence coming forward by his precipitous claim that Garay's testimony had sealed the case against Roberto D'Aubuisson.

⁴⁵ANSESAL was the National Intelligence Agency of El Salvador; Roberto D'Aubuisson worked there as second in command to Santivañez until the October 1979 coup. Santivañez, who was living in New Orleans as the Salvadoran consul, came forward in 1984 to reveal what he said were the true workings of the death squads. US diplomats and congressional staffers familiar with his allegations agree that Santivañez was "in a position to know" about the topics he addressed.

Roberto Girón Flores, who claimed that he was not allowed to speak with Garay until the day of the press conference announcing his story, was surprised by Duarte's suggestion that Garay's testimony was proof not only of Saravia's but also D'Aubuisson's guilt.

According to Flores and other lawyers interviewed, either prosecution, but especially D'Aubuisson's, demanded additional evidence or witnesses, who might have been frightened by the advance publicity.

The failure to examine a potential military role in the murder of Archbishop Romero is inexplicable -- except in the most cynical terms. It is barely conceivable that the assassins would kill perhaps the most venerated spokesperson against repression without obtaining, at a minimum, some assurances that they could be shielded from prosecution.⁴⁶ Sadly, even had the prosecutions succeeded on their own terms, they would almost certainly have failed to resolve all responsibility for the murder of the Archbishop.

The Lawyers Committee issues this report mindful of the parallels between Oscar Romero's murder and those of six Jesuit priests, their housekeeper and her daughter in November, 1989. The victims' stature in life virtually guarantees that responsibility for the murder lies close to the center of power. Their celebrity has earned their deaths international attention not shared by the majority of Salvadorans who have fallen beside them. This ensures that the government of El Salvador will face difficult choices in proceeding against those military personnel responsible. It is hoped that this crime a decade later will not succeed the still unresolved murder of a revered archbishop as the most flagrant demonstration of impunity in a nation where a system of justice has yet to be realized.

⁴⁶Military and civilian sources have said that well known targets are authorized centrally. (Some claim that the army's National Security Committee discussed killing Romero before the assassination). One military source told journalists that only the death squad run by former CIA asset and Vice Minister of Defense Colonel Nicolas Carranza was permitted to carry out the most politically sensitive killings. Dennis Volman, "Salvador Death Squads: A CIA Connection?" Christian Science Monitor, May 8, 1984.