



---

## Anatomy of a Cover-up: Lessons from the Domingo and Viernes Story

---

“When you hear these two words – National Security – you know two things: A crime is being committed and it is being covered-up.”

– Saul Landau, co-author of *Assassination on Embassy Row*, at the Institute for Policy Studies at the 1985 Memorial for Domingo and Viernes in Seattle, WA

### **I. Introduction: The Domingo and Viernes Story at the Conference on Human Rights Abuses: Expose the Cover-ups**

The Conference Human Rights Abuses: Expose the Cover-Ups takes place in an era which has seen some of the worst human rights abuses in history committed and exposed. The recent trial of a case brought by the widow of famed Chilean songwriter and poet, Victor Jara, against a member of the Chilean military command who committed the grossest human rights abuses, including the use of torture, summary executions and mass incarcerations is a major victory against tyranny. Other cases of human rights violations will be discussed at the Conference.

This presentation will focus on exposing the cover-ups of these crimes and some of the common features in a number of cases over the decades. It starts with an understanding of how crucial the “cover-up” is to those who would perpetrate human rights abuses on others. This “anatomy of a cover-up” traces what is known about the cover-up of the political assassinations of anti-Marcos union activists Silme Domingo and Gene Viernes at the hands of the Marcos regime in 1981.

This ‘anatomy’ includes a discussion of the following principal features of a “cover-up” including

1. How the crime was committed or reported to hide the true perpetrators involved, including how the murders were executed were designed to intimidate the victims into silence.
2. How the investigating officials failed to uncover important clues, pursued false leads and failed to adequately investigate and prosecute the more powerful interests who stood in the shadows.
3. Obstruction of justice committed by governments and/or the perpetrators to thwart the mechanisms of justice, including by false testimony, perjured statements, withholding key evidence or documents and intimidation or violence against victims and eyewitnesses who could implicate the higher ups.
4. The invocation of legal doctrines designed to thwart discovery of important evidence or grant immunity to official wrongdoers, including the “Act of State” doctrine, “National Security Privileges”, the State’s Secret doctrine, Complete and/or Qualified Immunity and the erosion of the important principle of “universal jurisdiction” against human rights violations.

*Exposing the role of US intelligence in the political assassination of two Filipino-American labor activists by the Marcos regime.*

As important as it is to recognize and expose the cover-up, human rights advocates must become skilled at defeating efforts to thwart achieving full justice. There are a number of lessons the Committee for Justice for Domingo and Viernes learned in its struggle to hold the Marcos regime accountable for the murders. A few of these lessons include:

1. Put forth a coherent and consistent theory of how the human rights violations were perpetrated and by whom, based upon the available evidence and reasonable theories. Debunk the ‘cover story’ as soon and as frequently as you can and make sure you tie that “false narrative” to the perpetrators.
2. Bring maximum public pressure on the investigative and prosecuting authorities to “do the right thing” by fully investigating the leads and clues you develop but always maintain your independent ability to act if necessary if the authorities abandon the case.
3. Expose and condemn any efforts to obstruct justice or thwart your efforts by making such efforts visible and tying them to the perpetrators if possible.
4. Use all legal and press resources at your disposal to debunk the various legal doctrines that are thrown up to block your access to justice.
5. Don’t let the passage of time deter your quest for justice. There are times when cases are not fully resolved for decades. Never give up!

*These papers have been compiled by Mike Withey. Mike was chief counsel for the Estates of Domingo and Viernes v. Ferdinand Marcos and the author of an upcoming book about the murders called Summary Execution: The Political Assassinations of Silme Domingo and Gene Viernes.*

## II. Background: The Murders

On June 1, 1981, two political activists, Silme Domingo and Gene Viernes, were murdered in Seattle. Ten years later, their estates, led by Silme’s widow, Terri Mast, his sister, Cindy Domingo, and attorney, Mike Withey won a \$15.1 million federal jury verdict holding the former dictator of the Philippines, Ferdinand Marcos, liable for the murders. Formed shortly after the murders in 1981, the Committee for Justice for Domingo and Viernes pursued justice in the decades’ long efforts to hold accountable all who were involved in these murders. They proved that Silme and Gene were murdered because they were effective activists against the Marcos regime. They proved that the murders were paid for out of a Marcos-run intelligence slush fund set up to pay for “special security projects.” Four men were charged with their murders and sentenced to life imprisonment without parole.

This was the first and only time ever that a foreign head of State has been held liable for the murder of US citizens. Even more remarkable, the murders took place under the watchful eyes of a secret FBI informant who came forward and perjured himself in an attempt to exonerate the hit men.

Recently, the friends of the slain activists demanded that the FBI turn over all documents related to its use of the FBI informant in the hopes of revealing the role of US intelligence in the murders. The mission, at its core, is to keep the memories of Silme Domingo, Gene Viernes, and other civil rights activists alive and to use their stories to affect change by building awareness and creating partnerships with other human rights organizations, civic allies, and socially and politically conscious individuals.

*This was the first and only time ever that a foreign head of State has been held liable for the murder of US citizens.*

In the process the CJDV encountered a concerted and powerful effort to cover-up these murders, which used many of the strategies and tactics identified in this article to deter the CJDV and local prosecuting attorneys from holding accountable the most powerful forces behind the murders, including the Philippine and U.S. governments.

### III. Timeline of Key Events

- June 1, 1981** Silme Domingo and Gene Viernes, anti-Marcos labor activists, are murdered in Seattle at the Local 37 ILWU (Cannery Workers) union hall.
- The hit men from the Tulusan Gang include Jimmy Ramil (trigger man) and Ben Guloy (decoy), Boy Pilay (lookout) and Tony Dictado (gang leader and getaway car driver).
- Silme, with four bullet wounds, lives long enough to name hit men to first responders.
- FBI informant Levane Forsythe is present at the scene and writes a report exonerating the hit men, claiming Silme never named hit men.
- June 2, 1981** Ramil and Guloy are arrested and charged with aggravated murder by King County Prosecuting Attorneys.
- June 3, 1981** The Committee for Justice for Domingo and Viernes (CJDV) is formed to bring all responsible to justice. Broad based movement attracts support. Publishes Appeal for Justice.
- Local FBI enters the investigation.
- July 13, 1981** Union President and pro-Marcos ally Tony Baruso's MAC 10 .45 caliber execution piece recovered as the murder weapon. Baruso arrested but released.
- September 1981** Ramil and Guloy convicted of murder, Forsythe testifies for the hit men.
- Dictado arrested and charged with murder based upon the "dispute over dispatch" theory (Tulusan gang wanted to be dispatched to run the gambling in Alaska)
- October 1981** CJDV receives secret reports from US intelligence sources that Marcos regime had the two murdered and that US told Marcos intelligence that Gene had brought \$290,000.00 to anti-Marcos opposition on his trip to Philippines in April 1981.
- April 1982** Dictado convicted.
- Pilay flees.
- FBI drop investigation. Special Agent takes unsolicited job offer at Sealand.

- September 1982** Estates of Domingo and Viernes filed federal lawsuit against Marcos, Philippines and US, alleging Marcos intelligence operation in US caused murders.
- December 1982** Marcos granted immunity from suit.  
Baruso's travel and bank records subpoenaed. His deposition taken.
- January 1983** Boy Pilay is tracked down by CJDV in Maryland, returns to Seattle and is arrested.  
CJDV demands Pilay and Baruso be charged but he is released.  
He is found murdered a few weeks later. Filipino Establan Ablang charged with murders but flees to Philippines.
- Early 1983** Secret Defense Intelligence Agency (DIA) circular released by CJDV which names top Marcos intelligence officers in the US here to "monitor and operate against anti-Marcos opposition."  
Leading moderate opposition leader Benigno Aquino Jr. assassinated in the Philippines at airport try to return.  
US government dismissed from civil lawsuit.
- Mid-1983** Discovery reveals Baruso made trip to SF on May 16-17th before murders but he denies it in his deposition.  
Forsythe deposed and admits being FBI informant who would be told to go to a location, observe what happened and write a report. States he worked undercover for Howard Hughes' right hand man Robert Maheu (used by JFK to get Mafia to assassinate Fidel Castro).
- February 1986** Marcos overthrown by People's Power and flees to Hawaii.  
CJDV subpoenas Marcos for deposition and obtains "Mabuhay Corporation Itemization of Expenditures" used as an intelligence slush fund and operated by pro-Marcos ally Dr. Leonilo Malabed:  
May 17<sup>th</sup> entry shows \$15,000 spent for "special security project."  
Testimony established Baruso paid \$5,000 for the hit and records show he deposited close to \$10,000 in cash into bank account in summer of 1981.  
CJDV travels to Philippines to obtain evidence of Marcos surveillance of Viernes on his trip.
- Summer 1986** CJDV takes Marcos and Malabed depositions. They take the 5th to questions about murders and money.

Court reinstates Marcos and adds Dr. Malabed as defendants in lawsuit. Estates engage in extensive discovery of Philippine intelligence officers in US and US agencies over next two years.

**Fall of 1989**

Estates settle with new government of Philippines

Estates win \$15.1 million jury verdict holding Marcoses liable.

Judge Rothstein holds Malabed and Baruso liable and impose additional \$8.3 million in damages.

**Mid-1990**

Estates settle with Marcos and Malabed for \$3 million.

**February 1991**

Baruso charged and convicted of murders based on CJDV theory of murders.

**Summer 2011**

Silme and Gene are honored on “Wall of Martyrs” in Manila commemorating those who gave their lives fighting the Marcos dictatorship.

**Summer 2016**

FBI admits it has 1100 pages on its “reliable” informant Forsythe.

---

## Creating a ‘cover story’ for Human Rights Violations

---

### I. The Domingo-Viernes Case

The very nature of a political assassination requires that the perpetrators concoct a “cover story” which implicates other perpetrators, other motives, and other reasons for the murders. Such a cover is built into the murder plot.

In the Domingo-Viernes case, the “cover-story” was that the two were murdered by a Filipino gang called the Tulisans because gang leader Tony Dictado was angry at Gene for not dispatching his “boys” to Alaska to run the gambling in the Filipino bunkhouses. It was seen as resulting from a “dispute over dispatch.”

“Hot-headed Filipinos shooting it up in the local union hall. Vicious thuggery.” These were the watch words which described the official reaction to these murders. The problem for the CJDV was that the lower level hitmen, Ramil, Guloy, Pilay and Dicatado all had their own motives for murdering Domingo and Viernes—to protect their gambling proceeds from the high stakes gambling they were running in the canneries in Alaska. As the first chapter describes, there was an argument between Dictado and Viernes at the first, May 26th dispatch to Alaska and gang leader Dictado wanted “his boys” sent but Viernes refused, citing the fact that a new and fairer dispatch process had been effectuated.

The local Seattle Police Department and King County Prosecuting Attorney were able to secure three convictions, of Ramil, Guloy and Dictado, on this theory of the case. The challenge for the CJDV was that this theory of the murders was accurate as to the hitmen, but NOT the real motive behind the murders, which was that it was initiated by the Marcos regime as a result of intelligence information that Marcos intelligence gathered on Gene and Silme, including false information from Naval Intelligence that Viernes had carried \$290,000.00 in cash with him in March of 1981 to supply to the anti-Marcos opposition.

But Terri Mast and the Rank and File movement in Local 37 was able to dispute this explanation for the murders by pointing out that many of Dictado’s “boys” would be dispatched at the very next dispatch to the Dillingham cannery in just two weeks.

The fact the murders were committed in Tony Baruso’s union hall after he had summoned Tony Dictado to meet with him on May 30th, also cast doubt on this cover-story. When Tony Baruso’s Mac. 10 45 caliber execution piece turned up as the murder weapon in July of 1981, it was apparent that there were higher-ups involved hoping to convince people that there was nothing more to the murders than revenge for not dispatching some of Dictado’s gang members to run the gambling.

These murders were committed in broad daylight in the Local 37 Union Hall and were clearly designed to intimidate the friends, families and supporters of the slain men. Undeterred, the newly formed Committee for Justice for Domingo and Viernes held a huge march through the International District, culminating in the Memorial for Gene Viernes. The march had as its banner “Turn Anguish to Anger” and was designed to send a message to the perpetrators of the murders and those who stood in the

shadows: We will not be intimidated. Projecting strength and unity in the face of human rights abuses is a noble and concrete step to expose and defeat the efforts to cover them up.

The CJDV later discovered that U.S. intelligence agencies had described these murders as being committed in “pseudo-amateur” style to mask the true perpetrators and their motives for murdering these two effective anti-Marcos union activists. “It was made to look like a dispute over dispatch” was how the CJDV characterized the original “cover-story” which hid the involvement of the Marcos regime.

Marcos, when he was reinstated as a defendant in the civil lawsuit brought against him, continued to defend the case on this exact cover story: That the SPD solved this murder years before Marcos was tried and it had nothing to do with Marcos. Fortunately, the CJDV has already “blown” this cover story by the time of the trial and his defense went nowhere.

## **II. Karen Silkwood’s ‘Car Accident’**

Karen Silkwood had been a nuclear worker at the Kerr-McGee plant in Oklahoma. She had been seriously contaminated by radiation at work, and after raising a stink and offering to provide secret documents to a reporter for The New York Times, was run off the road and killed. Her estate brought a lawsuit against the Kerr-McGee Corporation for the contamination.

Both the press and Kerr-McGee pushed the theory that Karen had been using drugs and then proceeded to drive her own car off the road, suffering a fatal accident. However, investigators for the Silkwood estate found evidence that her car showed signs that she had been rammed from behind. Papers from her collection were missing from the car, suggesting the perpetrators were seeking to prevent them from getting to the New York Times.

After what was the longest trial in Oklahoma history, the jury rendered its verdict, awarding \$505,000 in general and compensatory damages and \$10 million in punitive damages. The Wyoming “buckskin cowboy” lawyer Gerry Spence was the chief trial attorney for the estate, but most of the investigative and pre-trial work was performed by Daniel Sheehan and his investigative team headed by Father Bill Davis at the Christic Institute. Community outreach was headed by anti-nuclear activists Robert Alvarez and Kitty Tucker.

## **III. Rolando Galman: scapegoat for the assassination of Senator Benigno Aquino in August 1983**

Sen Benigno Aquino of the Movement for a Free Philippines, was one of the most vocal and influential figures in the moderate wing of the anti-Marcos opposition in the U.S. From the very beginning of his exile in the US, Aquino had always planned to return to oust Marcos. By 1983, Aquino decided it was time to go home. Marcos had developed lupus and was in a weakened condition both politically and physically. The economy was failing and the opposition, led by the NPA in the countryside and the KMU in the cities was gaining ground rapidly.

Aquino was fully aware of the dangers that awaited him. Warned that he would either be imprisoned or killed, Aquino answered, “If it's my fate to die by an assassin's bullet, so be it. But I cannot be petrified by inaction, or fear of assassination, and therefore stay on the side.” The statement proved prophetic.

On August 21, 1983 Aquino boarded a flight from Los Angeles to Manila with his supporters, including brother in law, Ken Kashiwahara, an ABC-TV journalist from the Bay Area. He and his entourage were jovial as Aquino looked forward to again being on Philippine soil after three years in exile. Ken filmed the entire sequence of events. It is available at online on the website for [The Domingo Viernes Story by Mike Withey](#).

Upon landing, military gendarmes entered the plane to escort Aquino from the plane. The officers barred anyone, including Ken, from leaving with him. As Aquino walked down the stairs and stepped onto the tarmac a hail of bullets from his military escort struck him full in the back of the head and he landed face down on the tarmac never to rise again. Soldiers loaded him into an armored personnel carrier and he was hauled off.

Another man on the airport tarmac, Rolando Galman, was shot dead by the military shortly after Aquino was killed. The Marcos government claimed Galman was hired by the communists and was the trigger man in Aquino's assassination. Immediately the Marcos regime and the press focused attention on Galman and blamed the communist for assassinating a known “moderate” oppositionist to heighten the crises of the regime.

The Agrava Commission appointed by the Philippine government was able to expose this cover story and a majority of its members found that Marcos' top general, Fabian Ver and his assistants were involved in the murder conspiracy. Eventually, Sen. Aquino's widow, Corazon Aquino, leading the People's Power movement toppled the Marcos regime in 1986.

#### **IV. The Ayotzinapa Forty-three: “The drug lords did it”**

Forty-three students who had commandeered a bus to travel to Mexico City were kidnapped at gun point and brutally murdered in September of 2014. The local police and government authorities and eventually the Mexican government put out the story that local drug gangs and organized criminal figures had committed the atrocities and buried the students in a mass grave. However, through years of struggle the parents and survivors have exposed this cover story but pointing out inconsistencies in the police's account and the lack of physical evidence at the supposed “mass grave” site. An international Commission of Jurists was brought in to investigate the murders and the cover-up but were not allowed to finish their work, leaving the country but not after describing the government's efforts to thwart and obstruct their investigation. Additional information on this case can be found in the sections below.

#### **V. Police Violence Against People of Color: a Human Rights Violation**

Mapping Police Violence is a research collaborative groups collecting comprehensive data on police killings nationwide to quantify the impact of police violence on communities. See [mappingpoliceviolencepr@gmail.com](mailto:mappingpoliceviolencepr@gmail.com). They issued a report on police killings in 2015 and here are their findings:

##### **Key Findings:**

1. Police killed at least 102 unarmed black people in 2015, nearly twice each week. (See which police departments were responsible for these deaths)
2. Nearly 1 in 3 black people killed by police in 2015 were identified as unarmed, though the actual number is likely higher due to underreporting

3. 37% of unarmed people killed by police were black in 2015 despite black people being only 13% of the U.S. population
4. Unarmed black people were killed at 5x the rate of unarmed whites in 2015
5. Only 10 of the 102 cases in 2015 where an unarmed black person was killed by police resulted in officer(s) being charged with a crime, and only 2 of these deaths (Matthew Ajibade and Eric Harris) resulted in convictions of officers involved. Only 1 of 2 officers convicted for their involvement in Matthew Ajibade's death received jail time. He was sentenced to 1 year in jail and allowed to serve this time exclusively on weekends.

From Ferguson to Chicago and Dallas and Baltimore, it has been quite common in police brutality cases to focus attention on the supposed criminal background and actions of the victims of police crimes. The media has focused on any prior misconduct of the victim despite the fact that the background was not known to police or irrelevant to any actions taken by the police.

Invariably, police claim that the victim “made a motion” or “grabbed for a gun” or “advanced in a threatening manner at police” before being shot and killed by responding officers. The presence of police video-cameras as well as smart phone videos of the interaction have often directly contradicted these versions of events and exposed police efforts to cover-up their crimes.

The incidence of police violence against people of color presents a major public health threat to those communities. Yet this violence is almost always covered up and buried in police denials and obfuscations. Given the pervasive racism in society, it is commonplace for those few police officers who are actually charged with crimes to be acquitted.

As speaker Gerald Lenoir has advocated in his paper at the Conference, Black Lives Matter is an international human rights issue.

Major reforms in our criminal justice system, including:

1. Ending the policy of mass incarcerations of people of color ( clear evidence of the failure of the “War on Drugs”);
2. Defunding “privatization” of prisons;
3. Reform in how police departments view their mission (from “occupying force” to “community partners”);
4. The exposure and elimination of police department use of low level infractions to fund their operations (ala Ferguson);
5. The demilitarization of police departments and response to community unrest; and
6. Advanced training in tactics to defuse confrontation rather than escalate it, etc.

---

## **Aiding a Cover-up: Limitations or Biases in the Nature of the Investigation**

---

### **I. The Domingo and Viernes murders**

In the police investigation of the Domingo and Viernes murders, headed by the Seattle Police Department and the King County Prosecuting Attorney's Office, was a good faith and thorough effort aimed at convicting the Tulusan gang members, Ramil, Guloy, Dictado, of the murders. However once it became clear that Tony Baruso was the master-mind of the murders who was potentially acting at the behest of the Marcos regime (as was eventually proven), the police and prosecutors got cold feet. When the prosecutor was provided the hard evidence of Baruso's involvement, including that his gun was the murder weapon, that he had paid the hitmen \$5000 for the murders and had invited Dictado to the union hall two days before the murder, he continued to decline to prosecute, leading Cindy Domingo to publish this in the CJDV newsletter "Update."

"Norm Maleng has long had the image of an objective, liberal and well-respected prosecutor. Recently this image has been tarnished and Maleng's true colors have been thoroughly exposed. As with other supposedly 'neutral' judicial institutions in our society, the prosecutor's office clearly operates with the most profound political biases. Maleng prosecutes to the hilt the common person and petty gangsters. But when powerful interests are threatened, he shirks from his sworn duty...The Committee for Justice has little confidence that Maleng will charge Baruso..."

The CJDV felt that the police had for a long time been interested in ridding the streets of the ID of the Tulusan gang. With their murders of Domingo and Viernes and the Committee crying out for justice, now was their chance. But Baruso presented other interests. He was a well-recognized member of the Filipino Community, worked at Boeing and had even run for office a number of years earlier.

Baruso was a key pro-Marcos leader of the Filipino Community in Seattle and on the West Coast. Shortly before the murders, Gene had traveled under an assumed name to the Philippines and met with the New People's Army, fighting a guerilla war against the regime in the countryside and the new and powerful independent trade union federation, the KMU--Kilusan Mayo Uno (May First Movement) in Manila, which had been outlawed by Marcos. Then Gene and Silme joined forces to get passed a resolution critical of Marcos' anti-labor decrees, harassment of the KMU and dispatching an ILWU investigative team to travel to the Philippine to report back on conditions there. The delegation never took place as Gene and Silme were assassinated within the month.

By failing to charge Baruso, the local authorities, in league with the FBI, who had started an investigation, only to have it fall apart, blocked any effort to compel Baruso to "turn state's evidence" and name the members of the Marcos military and intelligence team who approached him to find a method of ridding the Marcos regime of the threat that Gene and Silme posed to the regime.

Even more blatant was the conduct of the FBI and the U.S. Attorney's Office. They became involved in the investigation of the murders shortly after they were committed, on the theory that they were investigating a potential Hobbs Act violation (commission of violence against union officials for

performing their duties). The investigation certainly asked a lot of questions about the political associations of the slain officers and union members but never returned an indictment. In fact, the U.S. Attorney was considering offering a higher up, Baruso, immunity from prosecution, for testifying against gang member Tony Dictado. The CJDV called a press conference to denounce this gambit and it was dropped. But the lead FBI Agent in charge was made an unsolicited job offer from Sealand Corporation to head up their security forces and took the job. The FBI investigation was dropped.

## II. The Letelier/Moffitt Murders in 1976

In July of 1976 a car bomb exploded killing former Chilean Ambassador of the duly elected Socialist regime of Salvador Allende to the U.S. Orlando Letelier and his assistant, Ronnie Moffitt. It was widely seen to be a political assassination organized by the Pinochet government but the organization Letelier worked for, the Institute of Policy Studies (IPS), a progressive “think tank” in D.C. which was running into serious roadblocks in its effort to get the US government to cooperate in the murder investigation. See Assassination on Embassy Road - Dinges, John, and Saul Landau. New York: McGraw-Hill, 1981. Print. John Dinges is speaking at the Conference on this case.

Despite the fact that a car bombing was clearly an act of terror and summary execution, the U.S. government asserted various privileges and immunities to deny access to vitally important intelligence information about the Chilean government which was ardently supported by the Nixon/Kissinger regime which was widely suspected was involved in supporting Pinochet’s coup against Allende.

Isabel Letelier, the widow of the slain Ambassador and a Senior Fellow at who had founded, with her husband, the Europe-based Trans-national Institute (TNI) to increase international awareness about the struggles of the people in Latin America against poverty, oppression and military rule. IPS director Saul Landau, a journalist and filmmaker was deeply involved in the justice efforts. He had filmed “Paul Jacobs and the Nuclear Gang” about the cover-up of health hazards from the nuclear test blast in Utah in 1957.

The CJDV held a day-long seminar on the Letelier case in Seattle in 1982 featuring Isabel Letelier and Saul Landau. It was not until 2015 that the U.S. government finally released documents proving that Gen. Augusto Pinochet had ordered the assassination of Letelier but he was never brought to justice. John Dinges will speak on this case at the Conference.

---

## Obstruction of Justice

---

There are numerous ways that the perpetrators of human rights violations and government authorities who also have something to hide can and will obstruct justice and thwart efforts to hold those responsible accountable to the criminal or civil process. This aspect of cover ups can include planting evidence, perjury in official court proceedings, torturing eyewitnesses to change their versions of events, committing violence against eye witnesses or potential accomplices to shut them up, interfering with ongoing investigations, etc. In the Domingo and Viernes case, we saw at least 3 examples of this strategy but was able to defeat it eventually.

### I. The Domingo and Viernes Case

#### I.I. There was an FBI informant at the murders who perjured himself

The CJDV proved that there was an FBI informant, Levane Forsythe, present at the scene of the murders who came forward to testify on the 11th hour of the criminal prosecution of hitmen Jimmy Ramil and Ben Guloy to testify that they were not involved. It was bad enough that this informant, who had ties to the infamous Robert Maheu, Howard Hughes' lieutenant and the ex-CIA agent that the Kennedy Administration contacted to recruit the Mafia to assassination Fidel Castro after the Bay of Pigs ended in a fiasco.

Forsythe testified that his modus operandi was to be called by one of his controllers, was told to go to a particular location and observe what happened and then write a report. He did exactly that and is the mystery middle aged man described in the first chapter of Summary Execution. When asked where he sent his report on the Domingo and Viernes murders he stated he "wasn't trying too hard to remember." He also tried to draw the prosecuting attorney into prosecutorial misconduct when he taped their telephone conversation before his testimony, contrary to Washington law.

Not surprisingly, the prosecuting attorney did not bring any charges against Forsythe and he bragged later to his fellow FBI/DIA/IRS task force about his testimony in the case, as he continued to act as an FBI informant even after he perjured himself.

#### I.II. The Disappearance and Murder of Hit Man Boy Pilay

As the first chapter of Summary Execution describes, Boy Pilay was the "look out" for the hit team to draw attention away from Ramil and Guloy as they fled down the alley after shooting Gene and Silme. He was then dispatched by Tony Baruso to Alaska to threaten an eyewitness to the murder plot, Robert San Pablo. He then disappeared for almost 18 months. After Ramil, Guloy and Dictado were convicted, the CJDV realized that Pilay could implicate Baruso and we needed him arrested and charged in order to have him turn state's evidence. Up until then the Prosecutor had refused to charge Baruso with the murders, despite the fact that his gun was the murder weapon.

So we tracked him down to Maryland and asked the prosecuting attorney to get an arrest warrant to serve on Pilay at his mother's house in Maryland. The prosecuting attorney did but claimed the Maryland State Patrol's SWAT team surrounded the house, saw a man with a slight limp walk out and get in his car to drive away, then raided the house. It was Pilay who walked away. We heard he was back in Seattle and we executed a stake out at the gambling hall, only to have two FBI agents walk into the gambling hall announcing they were looking for Pilay. He was gone for a while but then returned. Our stake out found him and we called the police to get him arrested.

After the police picked him up, we went to the Prosecutor to pressure them to charge Pilay and Baruso with the murders and turn Pilay against Baruso. We told him that if Pilay was released he was a dead man. The prosecutor didn't charge either Baruso or Pilay and let Pilay out of jail.

Within a month, Pilay was found shot in the head twice at close range in his car. Two men were charged, one fled back to the Philippines and the other was convicted of murder but on a theory that had nothing to do with the Domingo and Viernes murders. The Boy Pilay saga is one particularly brutal example of the lengths that the perpetrators of these murders and their unwitting allies in government would go to in order to obstruct justice and thwart the CJDV's justice efforts.

### **I.III. The Failure to Charge Baruso when Marcos was still in Power: The Cover-Up Wins**

The CDJV's strategy was to "shake the tree until the high hanging fruit fell." By getting convictions of the hit men and gang leaders, we were hot on the trail of the middle (Baruso) and higher levels (Marcos regime and their spies in the U.S.) of the murder conspiracy. But going up the chain required Tony Baruso to be charged. The prosecutor missed two golden opportunities to charge him with the murders but failed to do so.

The first was when the murder weapon was recovered from a dumpster in West Seattle where it was "lost" by Tony Dictado, who was upset with Baruso for not bailing out Ramil and Guloy after they were arrested. The gun, a Mac. 10 .45 caliber execution piece, was registered by Baruso. When the police arrested him and confronted him with the gun, Baruso denied it was his. When shown the registration, he claimed the gun was stolen and he claimed it on insurance. When his insurance agent said he had not done so, his alibi for the murder weapon was blown.

Baruso was threatened by Gene and Silme because they were up and coming labor leaders who had founded the Rank and File Committee to press for tough bargaining with the Seafood Industry as well as a fair dispatch which meant members would not have to bribe Baruso for jobs in Alaska. The pair had also brought race discrimination lawsuits against the industry which Baruso wanted no part of.

After the murders, Baruso dispatched Pilay to Alaska to threaten the foreman, Robert San Pablo, who had overheard Dictado talk about the murder plan, Pilay told San Pablo that Baruso provided his gun for the murders and was supposed to pay the hit men \$5,000 for the murders. Pilay told San Pablo that if he said anything, he would blow up his car and kill him, in no particular order. San Pablo eventually testified to all of this in the two hit men trials.

The second opportunity to charge Baruso came when Pilay was finally arrested as a result of the CJDV stake out and the Prosecutors released Pilay rather than charge him and turn him to testify against Baruso.

Getting Baruso charged in 1981 would have presented the CJDV with the opportunity to threatened Baruso with life imprisonment without parole unless he agreed to testify about the Philippine military officer who came to the US to provide the money and direction for the hit. The CJDV discovered an itemization of expenditures from a Marcos-run intelligence slush fund that was used to pay for the murders on May 17, 1981. We also heard from confidential sources that the Marcos regime was told by Naval Intelligence that Viernes had carried with him \$290,000.00 to aid the anti-Marcos opposition in the Philippines. These sources indicated that a Lt. Col in the Philippine intelligence unit had traveled to the U.S. in mid-May to meet with consular officials and Baruso to plot the murders.

Getting Baruso charged would have allowed us to try to get Baruso to testify against the Marcos regime in exchange for a lighter sentence. But he was never charged until in 1990, after the CJDV proved that the Marcos regime was liable for the murders and the Marcoses were out of power.

## II. The Ayotzinapa Forty-three Case

On September 26, 2014 male students from Iguala, Mexico commandeered buses to transport them to Mexico City to join mass demonstrations against the government, as they had done on numerous occasions in the past. As the buses were set to leave, they were intercepted by police agents who set up roadblocks and opened fire repeatedly on buses and other vehicles trying to escape. Six people were killed, including a high school soccer player and a woman in a taxi. Finally police rounded up the forty-three students they could catch and took them away, never to be seen against.

In May of 2016 the LA Times printed this article, authored by journalist Tracy Wilkinson, which describes the obstruction of justice committed by the Mexican government in its treatment of the grisly disappearance and likely murders of 43 students from Mexico in July of 2014.

The LA Times article, entitled “New report raises chilling possibility that mystery of forty-three Mexican students' disappearance will never be solved” described the work of an independent Commission of five international jurists appointed by the International Inter-American Human Rights Commission were called in to investigate the disappearance. The article states as follows:

*Before the international investigators began their work in March of last year, the government had put forward what it called the “historical truth” in the Ayotzinapa case based on its own investigation: The students were taken away by local police on the orders of the mayor of Iguala and handed over to a drug-trafficking gang, which killed them and incinerated their bodies in a nearby trash dump.*

*[The panel] determined the official investigation was riddled with inconsistencies and flaws...It found that the government’s version of events was based largely on testimony acquired by torturing suspects. At least seventeen suspects, out of more than 170 people arrested, were tortured or subjected to ‘cruel and inhumane’ treatment.*

*Forensic evidence indicated that no fire took place in the trash dump capable of incinerating 43 bodies, the investigators said. And a video the team acquired appeared to show personnel from the Mexican attorney general’s office planting remains in a river a*

*day before they were recovered. (Those remains purportedly contained the only bone fragment that has been identified as belonging to one of the students.)*

*The report also advanced one possible theory for the attack on the students: The buses were being used to traffic heroin to the U.S.*

*The panel said its work was repeatedly blocked by bureaucratic hurdles and government resistance. Members said they were never granted requests to interview military personnel in the zone that night and were also denied access to a number of documents and witnesses.*

*When it became clear that the findings were going to be critical, “the government attempted what seems to be an increasingly common pattern: desprestigiar – kill the messenger,” said Tony Payan, an expert on Mexico at Rice University’s Baker Institute for Public Policy. The investigation “has only created more confusion. And that may be what the government wants.*

The (605 page) report (released in May of 2016) was the second of two. There won’t be a third. The Peña Nieto government declined to renew permission for the panel to continue its work.

The Ayotzinapa scandal has roiled Mexico like few others, triggering massive protests in Mexico and abroad. Part of the pathos is that the students were studying to become teachers at a school set up for the impoverished children of peasants.”

---

## The Use of Legal Doctrines to Block Access to Evidence

---

### I. The Domingo and Viernes Case: National Security and Foreign Policy Immunity Doctrines Debunked

After the Estates of Domingo and Viernes filed their civil lawsuit against Ferdinand Marcos, the Republic of the Philippines and various U.S. intelligence agencies, the U.S. brought a “suggestion of immunity” for Marcos (claiming he had head of state immunity from the lawsuit) as well as a motion to dismiss all U.S. defendants based upon three “immunity arguments.”

These included the claim of absolute immunity for the U.S. officials based upon “National Security” as well as “Foreign Policy.” This partial excerpt is taken from a chapter in Summary Execution which describes how these doctrines were asserted to obstruct the pursuit of justice in those murders and how the CJDV responded.

*On January 21, 1983 our legal team received the US government’s motion to dismiss our case. Claiming the murders were a result of internal union strife, the motion brusquely brushed aside our claims that the US violated international law by conspiring with Philippine officials to monitor and operate against the anti-Marcos opposition as presenting purely political questions and not subject to judicial inquiry. The individually named federal officials boldly asserted that they enjoyed absolute immunity based upon national security and foreign policy prerogatives. The brief argued that such immunity attaches when required by the public interest in the unhesitating performance of the special functions of their particular office.*

*Secretary of State Alexander Haig claimed that the parties bringing the lawsuit challenged the US’s relationship with the Philippines, which were intricately interwoven into the conduct of foreign affairs.*

*On February 13th, we filed our Opposition, citing over 145 separate cases and many articles and treatises in the law which supported our position. Relying on a very detailed complaint which alleged the specific acts by the FBI, US Naval Investigative Service and the CIA in surveilling and infiltrating the KDP, and providing false and derogatory information about Gene Viernes to the Marcos regime, the brief argued that these defendants:*

- 1. Agreed to join and carry out the goals of the civil conspiracy to harass, intimidate and commit acts of physical violence against the anti-Marcos opposition, including Gene and Silme, and to prevent them from exercising their constitutional rights to free speech and association;*
- 2. Communicated this agreement to the other US and Philippine government defendants;*
- 3. Directed their agents and subordinates to engage in specific acts of surveillance and intimidation of anti-Marcos Filipinos;*
- 4. Cooperated with similar acts of Marcos agents;*

5. *Carried out a policy of non-enforcement of the criminal laws of the US against Marcos agents; and*
6. *Engaged in specific acts to cover up the illegal objectives of the conspiracy.*

*As to national security and foreign policy immunity, we cited numerous cases holding that those categories are inherently vague and ill-defined stating that the potential scope of such an exception is boundless. Once case stated that “No doctrine that the Court could promulgate would seem more sinister and alarming.” We agreed.*

*In response to the US’s brazen assertion of national security immunity, in April of 1983, the CJDV convened a seminar on national security that featured International Law Professor Dr. Richard Falk of Princeton University, Larry Sarjeant of the National Conference of Black Lawyers and Rene Cruz of the KDP. Falk was my inspiration for going to law school and spoke eloquently. “This case is not only shocking,” he said, “it is in its way, routine – routine in the sense that where state interests are at stake, dictators dispose of anything that stands in their way.”*

*Sarjeant recounted the abuses of the FBI in Cointelpro and stated, “We must resolve to challenge such spurious doctrines as national security and foreign policy immunity which serve only to preserve the power structure. We must retain the belief that while we may at times be deterred, we still not be denied.”*

*Cruz detailed the long pattern of harassment experienced by the anti-Marcos opposition in the US “To us, when American citizens are murdered in broad daylight and a foreign government is clearly implicated, we would expect our own government to stand on our side and assist US in getting justice. Instead, with the local US Attorney, with the State Department and with the Justice Department we get nothing but a well-orchestrated cover up. They are siding with a foreign government, not American citizens. If the words ‘national security’ mean anything, it should mean that Gene and Silme should have been secure in their exercise of their constitutional rights, not that Marcos would be secure in having them killed.*

## **II. The University of Washington vs. the CIA: UWCHR’s lawsuit to obtain documents of the CIA’s role in the ‘death squads’ in El Salvador**

In the lawsuit brought by the UW CHR under the Freedom of Information Act (FOIA), the U.S. government originally asserted the infamous “Glomar Explorer” exception to the Act, which gives U.S. government departments the right to assert a blanket national security objection to say, “We cannot state whether we do or do not have documents that are or are not responsive to your request.”

The Central Intelligence Agency’s ability to claim that it can “neither confirm nor deny the existence or non-existence “of documents in FOIA requests stems from the case of the Glomar Explorer, a huge boat which was built by the CIA with help from wealthy industrialist Howard Hughes for the six year (1968 to 1974) Project Azorian. The CIA wanted to examine a Soviet submarine and its nuclear payload on the bottom of the ocean floor 1500 miles from Hawaii. Famed investigative journalist Seymour Hersh got wind of the project but the CIA convinced the New York Times to suppress publication of his account. Then another journalist Ann Philippi filed an FOIA request but the CIA stated that it could neither confirm nor deny that it did or did not have any responsive documents. See *Phillippi v. CIA*, 546 F.2d

1009, 1011-13 (D.C. Cir. 1976). *Phillippi v. CIA*, 655 F.2d 1325, 1327 (D.C. Cir. 1981). The Judge agreed and the Glomar exemption has held not only as to the CIA but other government agencies as well, in particular the NSA, which asserted this same legal doctrine to bar disclosure of NSA documents related to the Domingo and Viernes murders.

In the national security context, Executive Order 13526 Section 3.6(a) provides that agencies may issue Glomar responses “whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.”

For example, a court upheld the CIA’s refusal to confirm or deny whether it maintained records on a particular foreign national, accepting the CIA’s argument that even revealing the existence of related records could compromise national security by revealing agency sources or methods. *Wolf v. CIA*, 473 F.3d 370, (D.C. Cir. 2007). All federal appellate courts to address such a response have recognized such a mechanism. See, e.g., *Phillippi*, 546 F.2d at 1011-13; *Wilner v. NSA*, 592 F.3d 60, at 68 (2nd Cir. 2009); *Bassiouni v. CIA*, 392 F.3d 244, 246 (7th Cir. 2004), cert. denied, 125 S.Ct. 2945 (2005); *Minier v. CIA*, 88 F.3d 796, 800 (9th Cir. 1996); *Carpenter v. U.S. Dep’t of Justice*, 470 F.3d 434, 436-37 (1st Cir. 2006).

In invoking a Glomar response, an agency must provide the court with “a public affidavit explaining in as much detail as is possible the basis for its claim that it can be required neither to confirm nor to deny the existence of the requested records.” *Phillippi*, 546 F.2d at 1013. It is difficult to overcome the high level of deference courts accord agencies in the context of Glomar responses. In upholding the CIA’s issuance of a Glomar response to a request for CIA drone information, a court ruled that the standard to be applied was not whether it subjectively, wholly agreed with the agency’s evaluation of the harm in release, but whether “the Agency’s judgment objectively survives the test of reasonableness, good faith, specificity, and plausibility.” See *Am. Civil Liberties Union*, 2011 WL 4005324 at \*16.

It is also vital to argue that the agency’s justifications for nondisclosure contradict other evidence in the record. Demonstrate that the agency is withholding the records in bad faith because prior official acknowledgement or declassification of the same information demonstrates bad faith.

It is useful to challenge a Glomar response by showing that the fact of the existence of the information has been officially acknowledged to the public. “If the government has admitted that a specific record exists, a government agency may not later refuse to disclose whether that same record exists or not.” *Wilner v. National Security Agency*, 592 F.3d 60, 68 (2nd Cir. 2009). For example, a court held that the CIA had waived its right to invoke a Glomar response to at least those portions of the records which a former CIA director had referred to in testifying before Congress. *Wolf v. CIA*, 473 F.3d 370 (D.C. Cir.2007).

### III. The State’s Secret Privilege

One of the Conference Partners, the American Civil Liberties Union, has litigated numerous cases involved with challenging the State’s Secret Privilege and describes it as follows:

*The state secrets privilege, when properly invoked, permits the government to block the release of any information in a lawsuit that, if disclosed, would cause harm to national security. However, the Bush administration is increasingly using the privilege to dismiss entire lawsuits at the onset. The government has invoked the privilege to evade*

*accountability for torture, to silence national security whistleblowers, and even to dismiss a lawsuit alleging racial discrimination. This once-rare tool is being used not to protect the nation from harm, but to cover up the government's illegal actions and prevent further embarrassment.*

*In the ACLU's landmark case challenging the Bush administration's warrantless wiretapping program, a federal court rejected the government's claim that the lawsuit could not proceed because of state secrets. In her August 17, 2006 ruling in ACLU v. NSA, Judge Anna Diggs Taylor recognized that the government had publicly acknowledged that President Bush authorized the National Security Agency to wiretap Americans without warrants, and thus it could not claim that discussing the program in court would harm national security.*

*In the ACLU's case El-Masri v. Tenet, 437 F. Supp. 530, (E.D. Va. 2006) which challenged the illegal kidnapping of Khaled El-Masri, a German national, the U.S. District Court for the Eastern District of Virginia accepted the CIA's invocation of the state secrets privilege to dismiss El-Masri's entire lawsuit. The CIA claimed that the simple fact of holding proceedings would jeopardize state secrets, notwithstanding the vast amount of information that has already been made public about El-Masri and the United States' "extraordinary rendition" program. While it might be appropriate to protect classified evidence during the course of the case, the ACLU called the dismissal at such an early stage "unjust, unnecessary, and improper.*

*Unless the courts reject the government's overbroad claims of privilege, the government will have every incentive to continue invoking "state secrets" as a shield against embarrassing disclosures," the ACLU went on to state.*

The State's Secret Privilege not only protects U.S. government agencies from disclosure of documents but also has been used to justify the dismissal of lawsuits which impact the state's secrets. See *Totten v. United States*, 92 U.S. 105 (1876). Courts have applied the Totten bar in one of two scenarios: (1) The plaintiff is party to a secret agreement with the government; or (2) The plaintiff sues to solicit information from the government on a "state secret" matter. See *Weinberger v. Catholic Action of Hawaii, Peace Education Project*, 454 U.S. 139, 146 (1981). (Totten bar applies to suit against the United States Navy for failure to file an environmental impact statement regarding a "nuclear capable" facility where Navy would have to admit or deny proposed storage of nuclear weapons at the facility).

The Electronic Frontier Foundation (EFF) has also actively litigated this privilege. It states the following:

*"But since 9/11, first the Bush and then the Obama Administration have aggressively used the 'state secrets' privilege, insisting that entire cases could be exempt from judicial review at the outset if they touch on national security. They seek to use the narrow, evidentiary scalpel like a chainsaw, to deny justice for millions of ordinary Americans for rampant violations of their rights.*

The Administrations have even argued that cases must be dismissed entirely even when all the underlying facts are already public, if the judge's conclusion about these facts would confirm the allegations.

Under this theory, the government could potentially violate the law and Constitution as it sees fit, and – just by stamping “STATE SECRET” on the top of their actions—those injured by their actions would be denied justice. A Ninth Circuit Panel once described the argument as such:

“At base, the government argues here that state secrets form the subject matter of a lawsuit, and therefore require dismissal, any time a complaint contains allegations, the truth or falsity of which has been classified as secret by a government official...According to the government’s theory, the Judiciary should effectively cordon off all secret government actions from judicial scrutiny, immunizing the CIA and its partners from the demands and limits of the law.”

See *Mohamed v. Jepperson Databank* 579 F. 3d 853 (Ninth Cir. 2008).

Unfortunately this opinion was vacated by the full Ninth Circuit, sitting en banc in *Mohamed v. Jepperson Databank*, 614 F.3d 1070 (2010).