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# Ely, DeLillo, and the Distrusted Moments of Our Democracy

JONATHAN SIMON\*

I had occasion during our too brief friendship to give John two books (other than self serving “gifts” of my own prose). Both had to do with our mutual fascination with the Kennedy assassination, and Kennedy’s young assassin, Lee Harvey Oswald. One was a compilation (or claimed to be) of all the known photos of Lee Harvey Oswald.<sup>1</sup> My brother Adam, the master collector, had come across the book and knowing of my interest in the construction of Oswald’s life history by the Warren Commission, he had sent it to me. I gave it to John the last time he walked into my office and right before the beginning of a summer in which he faced a nasty round of chemotherapy. It was something he could look at without reading, while riding the waves of nausea that often accompany chemo. I knew he’d always lend it to me if I ever got back to research on our mutual interest in Oswald.

The other was Don DeLillo’s *Libra*, the postmodern novelist’s searing vision of how the Kennedy assassination might have taken shape.<sup>2</sup> It was a few weeks into an earlier summer, shortly after the close of a semester when John had taught a seminar on the Kennedy Assassination that he had allowed me to sit in on. John, who served (it almost sounds military) on the staff of the Warren Commission, had helped draft some of its contested Report,<sup>3</sup> and long defended its central conclusions, wanted the opportunity to look hard again at the case for a conspiracy. For me it was a chance to fulfill a youthful fantasy of being a conspiracy researcher, and to do so beside a person who had been a significant participant in constructing the most criticized piece of government investigation of the last century, and who also happened to be one of the leading political theorists and constitutional lawyers of his generation.

John was not, nor did he become in the course of the seminar, persuaded by any of the leading conspiracy theories (the mafia, Cuban exiles angered over the Bay of Pigs fiasco, Fidel Castro acting in reprisal for American attempts on his life, etc.). Nor was he drawn toward the

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1. ROBERT J. GRODEN, *THE SEARCH FOR LEE HARVEY OSWALD: A COMPREHENSIVE PHOTOGRAPHIC RECORD* (1995).

2. DON DELILLO, *LIBRA* (1990).

3. *THE WARREN COMMISSION: REPORT OF THE PRESIDENT’S COMMISSION ON THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY* (1964).

compulsive subjects of most conspiratorial minds, like the “single bullet” whose bio-political path through President Kennedy’s and Governor Connelly’s bodies was ridiculed on the screen by Kevin Costner playing New Orleans District Attorney Jim Garrison, in Oliver Stone’s *JFK*. Instead, John believed that the Commission and its staff had been lied to in 1964 by top members of the federal government, including Attorney General Robert Kennedy, about questions like whether or not the United States government had tried to assassinate Cuban leader Fidel Castro. For him those lies were reason enough to ask the basic questions all over again. It was the philosophy major (as much as the lawyer and law professor) in Ely that compelled him to withdraw the presumption of truth from the conclusions of the Warren Commission.

*Libra* unfolds a narrative of the assassination that has always struck me as remarkably plausible. DeLillo’s protagonists are not the power elite of Oliver Stone’s *JFK*, but rather lower ranked CIA contract agents and Cuban exile fighters with the taste of defeat and betrayal at the Bay of Pigs. The motivation begins more benignly, with the interest in changing the political climate by blaming Fidel Castro for an attempt to shoot the President, but is drawn toward the possibility of real assassination. The plan changes, or evolves, into something far more malignant. The anger and sense of betrayal that DeLillo artfully portrays in his characters seem intuitively far stronger grounds to kill the President than the strategic calculations that Oliver Stone imagined in the top levels of the United States military and intelligence services.

I knew John was not a likely DeLillo fan. He listened to show tunes and jazz standards on his office stereo, and to my disappointed observation, found nothing exhilarating about ambiguity or irony. But *Libra* was one of DeLillo’s most coherent novels, moving relentlessly toward a conclusion the reader knows in advance because it is history. Moreover some of its most post-modern narratives were actually lovingly treated fragments of the Warren Report itself. Finally, there was something about the image of the young John, who had already clerked for the celebrated Chief Justice, and who would produce perhaps the most satisfying scholarly rationalization of the Warren Court’s jurisprudence, struggling in the interstices of the twentieth century’s most lambasted investigation, that seemed to belong to the novel’s own sensibilities. It was as if in my own private *Libra*, John had been written in as a minor character. I wanted to John to see it there to, but I’m not sure he did.

The Warren Commission’s central finding — that Lee Harvey Oswald acted alone in killing the President — rested on two kinds of knowing. One was the absence of any clear evidence linking Oswald

personally to any identifiable accomplices. The second was a small but intriguing body of evidence that Oswald was a dangerous deviant whose childhood was filled with the kind of experiences that generations of social workers, criminologists, and other normalizing authorities of a now past disciplinary society had identified as the progenitors of crime; a broken home, a “strange” mother, an erratic search for attention and status.<sup>4</sup> In the appendix to the Report, the Warren Commission had included a whole biographical narrative that described Oswald’s life and provided a portrait of a man who could have killed a President to answer nothing more than his inner daemons. John was the author of that study. He was drawn to the assignment, in part, he told me, out of empathy for Oswald, who like John himself, had grown up in a female-headed, single-parent home, in a society that looked with deepest suspicions on the progeny of such homes, especially the sons. Yet this innocent interest produced the intellectual grounds for the most debated finding in investigative history.

John’s biography of Lee Harvey Oswald will never show up on a list of his justly famous publications, but for me it rounds out a life in letters that spans the branches and the roots of our American *nomos*.<sup>5</sup> Like others, I’ll always remember John as the author of *Democracy and Distrust*<sup>6</sup> a book that captured for the future a vision of the Warren Court’s work, preserved and protected in the friction free space of academic scholarship. But I also take comfort in thinking of John in 1964, waiting for his real career to begin, writing sense out of the life of Lee Harvey Oswald, working with all the available light, in the darkest corner of our recent past.

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4. Indeed, we know much of what we know about Oswald because he had been a subject of a disciplinary investigation conducted during a one month stay at the New York Home for Boys after an arrest for truancy. Oswald was 14. See Jonathan Simon, *Ghost in the Disciplinary Machine: Lee Harvey Oswald, Life-History, and the Truth of Crime*, 10 *Yale J.L. & HUMAN* 75 (1998).

5. See generally Robert M. Cover, *The Supreme Court, 1982 Term — Forward: Nomos and Narrative*, 97 *HARV. L. REV.* 4 (1983).

6. JOHN HART ELY, *DEMOCRACY AND DISTRUST* (1980).