

Ghosts of the Disciplinary Machine: Lee Harvey Oswald, Life-History, and the Truth of Crime

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It seems to me important, very important, to the record that we face the fact that this man was not only human but a rather ordinary one in many respects, and who appeared ordinary.

If we think that this was a man such as we might never meet, a great aberration from the normal, someone who would stand out in a crowd as unusual, then we don't know this man, we have no means of recognizing such a person again in advance of a crime such as he committed.

The important thing, I feel, and the only protection we have is to realize how human he was though he added to it this sudden and great violence beyond—

Ruth Paine¹

I. INTRODUCTION: EARL WARREN'S HAUNTED HOUSE

Thirty-four years ago, the President's Commission on the Assassination of President Kennedy, popularly known as the Warren Commission, published its famous report. The Commission's most

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1. WARREN COMMISSION, *THE WITNESSES: SELECTED AND EDITED FROM THE WARREN COMMISSION'S HEARINGS* 266 (1964) [hereinafter *WARREN COMMISSION, WITNESSES*]. Ruth Paine was a liberal Quaker who belonged to the American Civil Liberties Union and took part in civil rights and related causes. Marina Oswald, Lee Harvey Oswald's wife, was living with Paine in a Dallas suburb at the time of the assassination. According to the Warren Commission's findings, Oswald spent the night before the assassination at Paine's house, where he recovered a rifle he had stored in a garage—the rifle with which he shot the President. Paine was interrupted by a question from former CIA Director Allen Dulles.

famous conclusion, that Lee Harvey Oswald, acting alone, shot and killed President John F. Kennedy,² has been the subject of ceaseless public debate.³ Such attention, of course, is understandable. The theory of a “lone gunman” seems too mundane an explanation for the closest crime a republic can have to regicide.⁴ The overwhelming popular interest in the Commission’s judgment, however, has had the unfortunate consequence of deflecting analysis away from the Commission itself as a political and cultural event. It has prevented reflection on the meaning of the Commission as an artifact of legal history.⁵ In this Article, I begin a larger project that explores the

2. See WARREN COMMISSION, REPORT ON THE ASSASSINATION OF PRESIDENT KENNEDY 475-76 (1964) [hereinafter WARREN COMMISSION, REPORT]. Members of the Commission included Earl Warren, Chief Justice of the Supreme Court; Allen Dulles, former Director of the CIA; Richard Russell, Democratic Senator from Georgia; John Cooper, Republican Senator from Kentucky; Hale Boggs, Democratic Representative from Louisiana; Gerald Ford, Republican Representative from Michigan; and John McCloy, a senior diplomat.

3. The Warren Report has generated one of the most energetic debates in modern American political history. Many have accused the Commission of credulousness if not conspiracy. Some of the best known critics include: EDWARD JAY EPSTEIN, *INQUEST: THE WARREN COMMISSION AND THE ESTABLISHMENT OF TRUTH* (1966); JIM GARRISON, *ON THE TRAIL OF ASSASSINS* (1988); MARK LANE, *RUSH TO JUDGMENT* (1966); PETER DALE SCOTT, *DEEP POLITICS AND THE DEATH OF J.F.K.* (1993); and ANTHONY SUMMERS, *CONSPIRACY* (1981). The latter served as a source for Oliver Stone’s movie *JFK* (Warner Bros. 1992). Conspiracy discussion is also active on the World Wide Web. See, e.g., *The Kennedy Assassination Home Page* (visited Dec. 19, 1997) <<http://mcadams.posc.mu.edu/home.htm>>; *Les Duffy’s JFK Assassination Information Site* (visited Dec. 19, 1997) <<http://www.geocities.com/CapitolHill/2857/>>; *60 Greatest Conspiracies of All Time* (visited Dec. 19, 1997) <<http://www.conspire.com/jfkfront.html>>. For a recent book defending the Warren Commission, see GERALD POSNER, *CASE CLOSED: LEE HARVEY OSWALD AND THE ASSASSINATION OF J.F.K.* (1993).

4. I use the metaphor of “regicide” advisedly. Michel Foucault characterizes regicide as the paradigmatic crime of monarchical society, in which all crimes are to some extent attacks on the body of the sovereign. See MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 47 (Allan Sheridan trans., Pantheon 1977) (1975). Killing a president is as close to regicide as it is possible to come in a republican political order. The symbolic suggestions of regicide in the Kennedy assassination were further heightened by the nature of Kennedy’s massive head wound. Kings were symbolically represented as the “head” of the “body politic”—thus the significance of beheading as an act of revolutionary justice. See MICHAEL WALZER, *REGICIDE AND REVOLUTION AT THE TRIAL OF LOUIS XVI* 23-25 (1974). A president dying in office is traumatic, a murdered president even more so, but here the President’s brain tissues were blown into the faces of individual witnesses and described to millions of others. Chief Justice Warren apparently was so troubled by the autopsy photos of JFK’s head that he could not sleep at night for the thought of them. He told Norman Redlich that he feared the editors of *Life* would print them on the cover of the magazine. See BERNARD SCHWARTZ, *SUPER CHIEF: EARL WARREN AND HIS SUPREME COURT* 498 (1983). The decision to withhold the photos turned out to be a weighty choice because their absence has fueled speculation that the Warren Commission engaged in a cover-up ever since. See *id.* Warren, a master of modern government, may have appreciated just how unsettling such a spectacle could be. There was something premodern in the physicality with which this sovereign figure had been dispatched. No doubt adding to this corporeality was Oswald’s lynching by Jack Ruby while millions watched on live television.

5. For an early exception, see generally EPSTEIN, *supra* note 3. More recently, scholars have begun to explore the Kennedy assassination and its aftermath in a more complete cultural context. For a sophisticated effort to understand the role of the media in producing the social meaning of the Kennedy assassination, see BARBIE ZELIZER, *COVERING THE BODY: THE KENNEDY ASSASSINATION, THE MEDIA, AND THE SHAPING OF COLLECTIVE MEMORY* (1992). See also SCOTT, *supra* note 3.

significance of the Kennedy assassination by reflecting on a narrow but pivotal part of the Commission's work: the life-history of Lee Harvey Oswald that comprises the majority of chapter seven of the Warren Report.⁶ I am particularly interested in the ways in which the Report's psychological biography of Oswald—sembled primarily by three young members of the Commission's staff—opens a unique window into the history of what Michel Foucault calls "disciplinary power."⁷ I am also interested in exploring the ways in which an examination of the Warren Report's biography of Oswald can suggest aspects of criminological truth missed by Foucault.

My interest in the Commission's life-history of Oswald is far from accidental. The centrality of life-history in the Kennedy assassination was brilliantly explored by the novelist Don DeLillo in *Libra*, his account of Oswald and the assassination.⁸ In *Libra*, life-history incorporates both knowledge of the self and the unknowable synergies between events and choices.⁹ Oswald's biography is the conceptual centerpiece of the Warren Report, the symbolic axis on which it turns. For the Warren Commission was charged not only with discovering the truth about the assassination, with discovering its meaning, but also with persuading the American people of that truth. The Commission had to do more than simply trace the bullets that killed President Kennedy to a gun in Lee Harvey Oswald's hands: It had to fill the empty space of that trajectory with a believable explanation; it had to make sense of what happened. And as the Commission began to edge toward its celebrated thesis that Oswald alone was responsible for the death of the President, it became clear that its Report would have to anchor the truth of the crime inside Lee Harvey Oswald himself.¹⁰ The more the Commission rejected a conspiratorial interpretation of Oswald's act, the more it became necessary for it to present the truth

6. See WARREN COMMISSION, REPORT, *supra* note 2, at 375-429 ("Lee Harvey Oswald: Background and Possible Motives").

7. FOUCAULT, *supra* note 4, at 138-41. This biography was published as an appendix to the Report. See WARREN COMMISSION, REPORT, *supra* note 2, at 669-740 ("Appendix XIII: Biography of Lee Harvey Oswald"). Chapter seven drew on this for its narrative of Oswald's life and motivations.

8. DON DELILLO, *LIBRA* (1988).

9. "Think of two parallel lines," wrote DeLillo. "One is the life of Lee H. Oswald. One is a conspiracy to kill the President. What bridges the space between them? What makes a connection inevitable? There is a third line. It comes out of dreams, visions, intuitions, prayers, out of the deepest levels of the self. It's not generated by cause and effect like the other two lines. It's a line that cuts across causality, cuts across time. It has no history that we can recognize or understand. But it forces a connection. It puts a man on the path of his destiny." *Id.* at 339.

10. The Warren Commission investigators, for instance, considered the possibility that a variety of organizations might have worked with or inspired Oswald, including the Soviet Union, Cuba, domestic left-wing groups, organized crime, and right-wing groups in Dallas and New Orleans. See WARREN COMMISSION, REPORT, *supra* note 2, at 243-74.

of the assassination and the truth of Lee Harvey Oswald's personality as one. In approaching this task, the Commission required a portrait of Oswald's life that would convincingly explain his behavior. It required a psychobiographical foundation to interpret a criminal-political event.¹¹

The Warren Commission was hardly unique in anchoring the meaning of a crime in the life-history of its perpetrator. The Commission, rather, was traversing well-worn grooves laid down by more than two centuries of writing by prison reformers, social workers, criminologists, and psychiatrists. Beginning in the early nineteenth century, legal and scientific experts vigorously promoted the idea that the truth of crime lay in the criminal, and they sought to collect detailed information about petty deviants in order to track and control their behavior.¹² The institutional sources on which the Warren Commission drew to assemble Oswald's life-history—what I call the Commission's "ghosts"—reflect this practice of assembling clinical information about deviant individuals, revealing the presence of a broad enterprise of investigating criminal personalities in the mid-twentieth century. As I will explain, for instance, the Warren Commission learned about Oswald's childhood and family circumstances (details of which were critical to its analysis of the assassination) because at age thirteen, Oswald became a subject of New York's juvenile court, one of the first encounters he had with a variety of such "disciplinary institutions" throughout his brief life. In this respect, the clinical knowledge characteristic of modern efforts to explain and combat crime, as well as the organizations that collected and analyzed such knowledge, form the background against which chapter seven's biographical truth unfolds.

In Part II, I offer a brief overview of the penological tradition that formed the foundation of the disciplinary institutions on which the

11. This task was made even more acute by the need, of which all of the members of the Commission may or may not have been aware, to avoid exposure of the intelligence operations surrounding the assassination that became public knowledge more than a decade later, including the participation of members of organized crime in covert acts of national security. *See generally* SCOTT, *supra* note 3.

12. The literature on the history of such efforts and related developments in penology is extensive. *See, e.g.*, THOMAS DUMM, *DEMOCRACY AND DISCIPLINE: DISCIPLINARY ORIGINS OF THE UNITED STATES* (1987); FOUCAULT, *supra* note 4; MICHEL FOUCAULT, I, PIERRE RIVIERE, HAVING SLAUGHTERED MY MOTHER, MY SISTER AND MY BROTHER . . . : A CASE OF PARRICIDE IN THE 19TH CENTURY (Frank Jelinek trans., University of Neb. Press 1975) (1973); DAVID GARLAND, *PUNISHMENT AND WELFARE: A HISTORY OF PENAL STRATEGIES* (1984); MICHAEL IGNATIEFF, *A JUST MEASURE OF PAIN: THE PENITENTIARY IN THE INDUSTRIAL REVOLUTION, 1750-1850* (1978); DARIO MELOSSI & MASSIMO PAVARINI, *THE PRISON AND THE FACTORY: ORIGINS OF THE PENITENTIARY SYSTEM* (1978); DAVID J. ROTHMAN, *THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC* (1971); JONATHAN SIMON, *POOR DISCIPLINE: PAROLE AND THE SOCIAL CONTROL OF THE UNDERCLASS, 1890-1990* (1993).

Warren Commission drew to assemble Oswald's biography. This tradition dominated American criminal law until the decade following the Kennedy assassination, and it is critical to understand its history, particularly what is known as its Progressive period, to understand the Report itself. This history has been examined most incisively by Michel Foucault, and this section of my Article thus in part constitutes a discussion of his work. I am especially concerned with explaining how Foucault understood the relation between penology and sociopolitical organization as a whole.

In Part III, I describe the specific disciplinary sources from which the Commission constructed its life-history of Oswald, particularly juvenile courts and the military. My aim here is not to re-present Oswald's life in any comprehensive sense (that task was undertaken by the Commission), but rather to map the particular wellsprings of knowledge about Oswald found in the Report and to reveal their institutional deposits of power.¹³ This "genealogical" analysis is different from a "hermeneutics of suspicion," which exposes official discourse as a hollow sham.¹⁴ Instead, following Foucault, I do not believe criminological explanations are discredited merely because they operate against a discursive and institutional background. My goal is simply to understand what disciplinary sources made possible the particular type of criminological truth present in the Warren Report.

In Part IV, I examine the role that Oswald's mother, Marguerite, played in the Commission's interpretation of her son's criminal behavior. Marguerite's own life-history, particularly her bitter conflict with dominant gender norms of the period, became central to how the Commission understood Lee Oswald's personality. Her testimony before the Commission—which combined spectacular but unsupported claims about the role of the CIA in killing the President with the

13. Oswald's life-history has been retold several times since the Warren Commission. Recent efforts include NORMAN MAILER, *OSWALD'S TALE: AN AMERICAN MYSTERY* (1995); and POSNER, *supra* note 3. I borrow the phrase "deposits of power" from Stanley Cohen, who used it to describe the epistemological by-products of institutional practices: "These deposits take the form of descriptions (stories) and causal theories, which are drawn upon and leave behind real forms of power." STANLEY COHEN, *VISIONS OF SOCIAL WORK* 84 (1985).

14. The phrase is Paul Ricoeur's. See PAUL RICOEUR, *FREUD AND PHILOSOPHY: AN ESSAY ON INTERPRETATION* 32 (1970); see also Linda Fisher, *Hermeneutics of Suspicion and Postmodern Paranoia: Psychologies of Interpretation*, 16 *PHIL. & LITERATURE* 106, 114 n.4 (1992); Geoffrey H. Hartman, *Tasking the American University: 1990s*, 6 *YALE J.L. & HUMAN.* 105 (1994); Francis J. Mootz, III, *The Ontological Basis of Legal Hermeneutics: A Proposed Model of Inquiry Based on the Work of Gadamer, Habermas, and Ricoeur*, 68 *B.U. L. REV.* 523, 584-96 (1988). On Foucauldian genealogical method, see generally MITCHELL DEAN, *CRITICAL AND EFFECTIVE HISTORIES: FOUCAULT'S METHODS AND HISTORICAL SOCIOLOGY* (1994); HUBERT DREYFUS & PAUL RABINOW, *MICHEL FOUCAULT: BEYOND HERMENEUTICS AND STRUCTURALISM* (1982); and JOHN TAJCHMAN, *MICHEL FOUCAULT: THE FREEDOM OF PHILOSOPHY* (1985).

sincere promise to produce documents to prove that her son was a model child—should be read as an impassioned struggle against the forces of disciplinary knowledge that interpreted her son's life and as a critique of the Warren Report's epistemological strategies and their institutional supports. Beneath Marguerite's often disturbing testimony is a woman groping toward an unarticulated understanding of the nature of criminological truth. I wish to retrieve her voice. At this point in my analysis, propelled by Marguerite's testimony, I begin to reexamine the meaning of Oswald's act as intricately intertwined with the very disciplinary institutions that ultimately helped explain it. My goal is to read the construction of chapter seven's truth in reverse by understanding more clearly the cultural and political conditions that supported Oswald's act and the Commission's work. In this respect, I argue, the meaning of the Kennedy assassination may indeed lie in Lee Harvey Oswald's life-history, though in a very different way than is currently understood.

II. DISCIPLINARY POWER AND THE TRUTH OF CRIME

In *Discipline and Punish: The Birth of the Prison*, Michel Foucault characterizes the emergence of modern penology as a fundamental reconfiguration of political authority in general.¹⁵ Before the creation of modern penal practice, writes Foucault, most serious crimes were punished with either death or some less severe form of physical harm or disfigurement, including whippings, split cheeks, brands, and cropped ears. These "rituals of the scaffold" were designed to manifest the awesome and glorious figure of the sovereign.¹⁶ Criminals were understood as traitors against the king's peace, and the king responded to their crimes by reasserting his power through their public physical dismemberment or mutilation. Such physical harm was designed to serve as a kind of morality tale in which the king's subjects witnessed the gruesome consequence of crime in the necessary triumph of law. The response, that is, operated from the criminal's body out to the audience—its real object. According to Foucault, in the course of the eighteenth and nineteenth centuries, this dominant response to crime began to change. Whereas public spectacle and physical pain followed a judgment against serious offenders in an earlier period, in the modern era the psychological methods associated with prison reform became the characteristic response to criminality.¹⁷ While prisons involved physical custody,

15. See FOUCAULT, *supra* note 4, at 222.

16. *Id.* at 53.

17. Foucault may have exaggerated the swiftness of the shift from spectacular to disciplinary punishments, but the direction of the shift and its relationship to political power remains

they did not target the body as an object of pain nor create public spectacles of retribution. Instead, prisons worked to instill obedience and social utility in their inmates by encouraging them to internalize methods of self-scrutiny and control. No longer merely an enemy of the king's peace, the criminal in this historical period came to represent deviation from a social norm to be corrected and restored if possible, and eliminated by life sentences or execution if not. The goal of the prison was to restore this norm by rehabilitating offenders through a meticulous categorization and coordination of their behavior using mechanisms of external and internal surveillance.¹⁸

According to Foucault, this change in penal practice represented a transformation not simply of the penal sphere; instead, it reflected a more fundamental transformation of the operation of social and political power in society. The rituals of the scaffold played a critical role in promoting a system of authority based on the super-power of the sovereign and his associated local rulers. In the new "disciplinary society" that emerged contemporaneous with the birth of the prison, the state maintained its official concept of sovereignty, but its capacity to rule increasingly was based on the deployment of disciplinary techniques at the microlevel of society. In place of the scaffold and tools of physical mutilation, the sovereign relied on paper forms and files for archiving information, spaces designed to optimize surveillance by marking off individuals and disciplinary agents capable of analyzing the details of the self and correcting deviations. This approach was designed to produce a "docile" population whose social utility could be more easily measured and behavior more efficiently directed.¹⁹ It was this new relation of power and knowledge, according to Foucault, that permitted the rise of democratic polities with their ideological celebration of the individual and its liberties. Liberal

persuasive. See PIETER SPIERENBURG, *THE PRISON EXPERIENCE: DISCIPLINARY INSTITUTIONS AND THEIR INMATES IN EARLY MODERN EUROPE* (1991).

18. In recent work, Malcolm Feeley and I have explored the end of this form of penology, even as an aspiration, and have examined the emergence of new penological practices and strategies. See generally Malcolm M. Feeley & Jonathan Simon, *Actuarial Justice: Power/Knowledge in Contemporary Criminal Law*, in *THE FUTURE OF CRIMINOLOGY* 173 (David Nelkin ed., 1994) (examining new practices in criminal law that exemplify risk management orientation); Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and its Implications*, 30 *CRIMINOLOGY* 449 (1992) (arguing that penal enterprise has abandoned traditional concerns with transforming individuals to address community concerns and instead seeks to manage a permanent criminal underclass for ends more related to internal managerial efficiency than socially defined objectives like rehabilitation or punishment); Jonathan Simon & Malcolm M. Feeley, *True Crime: The New Penology and Public Discourse on Crime*, in *PUNISHMENT AND SOCIAL CONTROL: ESSAYS IN HONOR OF SHELDON MESSINGER* 147 (Thomas G. Blomberg & Stanley Cohen eds., 1995) (arguing that the new penology is dominant among penal professionals but has little influence on public discourse about crime).

19. FOUCAULT, *supra* note 4, at 168.

political theory, that is, with its talk of social contracts, rights and national constitutions, implicitly was based on an archipelago of lowly disciplinary institutions such as prisons, factories, and schools that made formally free individuals governable. Emerging institutions of democratic self-governance relied on the simultaneous construction of organizations capable of disciplining the self through a detailed knowledge of the individual. Banal mechanisms of surveillance drawn from penal practice represented a fundamental component of the great political transformation that made the individual citizen sovereign.

This new disciplinary political regime developed over time and revealed as much change as continuity in its history.²⁰ The two most important periods in its transformation fell at the beginning of the nineteenth century, with the rise of the modern prison, and at the beginning of the twentieth, with the invention of penal social work. This second phase, the period most important for my purposes, is known as the Progressive era of penology. It gave birth to the secular, scientific form of penal practice, in contrast to the quasi-religious understanding of "penitentiary" reform that prevailed for much of the nineteenth century. This scientific form of penology saw the introduction of individualization as the absolute aspiration of penal practice.²¹ Each of the major Progressive era penal innovations, particularly the indeterminate sentence, parole, and probation, mandated that justice be based on the specific etiology of the offender's criminality. The innovations presupposed the capacity of the era's institutions to produce criminological truth. Because the possible sources of criminality recognized by the Progressives were multiplex (they included genetically inherited mental traits, cultural maladjustment, and psychopathologies of all types), it was critical in Progressive penology to understand the truth of a particular offender in complete detail. In this era, therefore, while scientific data of all kinds was highly valued in penal practice, a special premium was placed on collecting a rich narrative history of the offender's life, preferably narrated by the offender himself as well as by his family members and others in a position to observe his circumstances.²² Collecting life-histories thus emerged as a crucial element of disciplinary power in

20. For a discussion of periodization in the history of penology and a case for the distinctiveness of Progressive penology, see generally David J. Rothman, *Sentencing Reform in Historical Perspective*, 29 *CRIME & DELINQ.* 637 (1983).

21. See generally DAVID J. ROTHMAN, *CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA* (1980) (discussing penal innovations like parole, probation, and the juvenile court in light of the individualized model of justice).

22. For a close analysis of life-history in the practice and theory of American social science, see JAMES BENNETT, *ORAL HISTORY AND DELINQUENCY: THE RHETORIC OF CRIMINOLOGY* (1981).

the scientific era, providing a critical link between detailed knowledge of individuals and the governance of the institutional spaces they inhabited.

Perhaps no institution better characterizes the Progressive era of scientific penology than the juvenile court, which was formed during the early part of the twentieth century as a response to a perceived increase in the number of young offenders.²³ The juvenile court combined a thoroughgoing commitment to rehabilitation over retribution with an identification with the fields of medicine and social work. Deriving its legal authority from the doctrine of *parens patriae*, meaning literally that the king was the “father of the nation,” the court linked the power of the sovereign state to act as a parent to a capillary system of knowledge collection that relied on a coterie of disciplinary caseworkers dutifully assembling and categorizing delinquent behavior. In short, the juvenile court brought to an apotheosis the revolutionary transformation of power begun with the birth of the prison a century before. It represented the most profound inversion of the role biographical narrative had played in the sociopolitical order of earlier periods. “For a long time ordinary individuality—the everyday individuality of everybody—remained below the threshold of description,” noted Foucault.

To be looked at, observed, described in detail, followed from day to day by an uninterrupted writing was a privilege. *The chronicle of a man, the account of his life, his historiography, written as he lived out his life formed part of the rituals of his power.* The disciplinary methods reversed this relation, lowered the threshold of describable individuality and made this description a means of control and a method of domination.²⁴

The juvenile court, a legal institution specifically for young, powerless individuals, brought this inversion into its very center. It was a thoroughly modern instrument of Progressive governance. It was also one that would leave its mark on Lee Harvey Oswald and the Warren Commission, a subject to which I will turn in a moment.

Before discussing the Warren Commission’s use of life-history, it is worth noting the full theoretical implications that lay beneath Foucault’s analysis of criminological biography. For underlying the notion of life-history in Foucault’s work is a kind of paradox. Foucault argued that the rise of disciplinary power suggested that criminal behavior could be primarily explained not through a juridical notion

23. For further analysis, see Jonathan Simon, *Power Without Parents: Juvenile Justice in a Postmodern Society*, 16 *CARDOZO L. REV.* 1363, 1384-92 (1995).

24. FOUCAULT, *supra* note 4, at 191 (emphasis added).

of individual responsibility, but through a new notion of causality with medical, educational, and administrative implications. A criminal, that is, came from somewhere, a place that a detailed life-history could discern. ("The introduction of the 'biographical' is important to the history of penalty," Foucault noted, "because it established the 'criminal' as existing before the crime and even outside of it."²⁵) While this new vision of causality took the individual as its object, then, it also dispersed the origins of criminal behavior across the social field; the individuation of a criminal act through life-history simultaneously represented a kind of death of the individual subject. "Behind the offender to whom the investigation of the facts may attribute responsibility for an offense," wrote Foucault,

stands the delinquent whose slow formation is shown in a biographical investigation. . . . [O]ne sees penal discourse and psychiatric discourse crossing each other's frontiers; and there, at their point of junction, is formed the "dangerous" individual, which makes it possible to draw up a network of causality in terms of the entire biography and present a verdict of punishment-correction.²⁶

In the Warren Report, Oswald is Foucault's ultimate "dangerous individual." He is the perfect poster boy for a disciplinary society: the youthful deviant who, diagnosed but untreated, went on to strike a lethal blow at the core of national security. This image of Oswald was all the more potent because the Commission's biographical truth was to be the final legal word on his life, undisturbed by the discourse of moral and legal blame that a criminal trial in Texas would have produced had Oswald lived.

III. KNOWING OSWALD: FROM TRUANT TO ASSASSIN

The figure of Lee Harvey Oswald appears throughout the pages of the Warren Report. It is chapter seven of the Commission's work, however, titled "Lee Harvey Oswald: Background and Possible Motives," that provides the most penetrating analysis of Oswald's life and its portents of assassination.²⁷ The chapter, in fact, functions as the real, conceptual conclusion of the Report as a whole, though it appears structurally as the penultimate section. By the time chapter seven was written, the Commission's examination of the physical evidence already had pointed to Oswald as the man who shot the rifle

25. *Id.* at 252.

26. *Id.*

27. A fuller version of Oswald's life-history was published as Appendix XIII of the Report. See WARREN COMMISSION, REPORT, *supra* note 2, at 669-740.

that killed the President. And the Commission's analysis of Oswald's associates had revealed no visible links to any of the governments, movements, or individuals that might have had a motive to assassinate Kennedy. Oswald seemed to have acted alone. If the crime at Dealey Plaza were to have a truth, a meaning under such circumstances, it would have to be found in Oswald's life, in the line that led Oswald from youthful truant to adult assassin. It was the task of chapter seven of the Report to draw that line.

Oswald's life-history was assembled initially by three Commission staff members, John Hart Ely, Lloyd Weinreb, and Richard Mosk, and woven into chapter seven by Commission assistant counsel Albert E. Jenner, Jr. and Wesley J. Liebeler. While this is not the place to consider the contributions of specific Warren Commission staff members, it is notable that Ely, Weinreb, and Liebeler all went on to distinguished careers in legal teaching. Ely, who clerked for Chief Justice Warren, taught at Harvard and Yale, served as dean of Stanford Law School, and is currently teaching at the University of Miami; Weinreb has been a professor of law at Harvard for many years; and Liebeler was a professor of law at the University of California, Los Angeles, where he is now professor emeritus.²⁸ The careers of Ely, Weinreb, and Liebeler are significant, in part, because they help account for the exceptionally high quality of chapter seven, and, more importantly, they explain the fact that the Report in many ways is a piece of scholarship. Commission critic Edward Epstein claimed that within the Commission, chapter seven was considered the finest piece of investigatory and narrative work of the Report.²⁹ For those who have read the chapter and admired its incisive analysis and comprehensive scope, such a judgment is hardly surprising.

By the time of his death at the age of twenty-four, Oswald had made it into the files of dozens of organizations that track potentially troublesome people, from the CIA to the KGB, and from the marine Corps to Guy Banister's celebrated detective agency.³⁰ A figure who was "a rather ordinary one in many respects, and who appeared or-

28. Norman Redlich, then professor of law and later dean of the New York University School of Law, and Alfred Goldberg, a historian with the United States Air Force, had overall responsibility for drafting the report and thus may have had a hand in editing chapter seven.

29. See EPSTEIN, *supra* note 3, at 131. Nor is it a surprise that the chapter provided the key source material for many of the later books on Oswald, including Don DeLillo's *Libra* and Norman Mailer's *Oswald's Tale*. See DELILLO, *supra* note 8; MAILER, *supra* note 13. While Mailer added significant new research on Oswald's life in the Soviet Union, both he and DeLillo drew almost exclusively on the Warren Commission's presentation of Oswald's biography in chapter seven of the Warren Report.

30. On Banister's agency and its Oswald files that were purchased and later destroyed by the Louisiana State Police, see ROBERT G. BLAKEY & RICHARD N. BILLINGS, *THE PLOT TO KILL THE PRESIDENT* 167 (1981). Banister also played a central role in Jim Garrison's version of the assassination. See GARRISON, *supra* note 3, at 36-38.

TABLE 1. LEE HARVEY OSWALD'S DISCIPLINARY CAREER

INSTITUTION	TIME
Bethlehem Children's Home New Orleans (1942-1943)	13 months at age 3-4
New York Youth House for Boys New York City (1953)	1 month at age 13
Civil Air Patrol (light drilling unit) New Orleans (1955)	3-9 months at age 15
United States Marine Corps California and Japan (1957-1959) (service included two courts martial and incarceration in marine brig for 28 days)	2.5 years at age 17-19
Union of Soviet Socialist Republics (USSR) (1960-1962) ³¹ (time included three days in Botkinskaya Hospital Mental Unit in Moscow)	2 years at age 20-22

dinary," Oswald was a thoroughly documented individual.³² This documentation emerged in large part from what might be called Oswald's "disciplinary career" (see Table 1). We can never know how much influence each "site" in this career had on Oswald's life, but collectively, they provided a rich enough array of observations for the talented young lawyers of the Warren Commission to sketch a complex portrait of the alleged killer of the President.

To some conspiracy theorists, of course, Oswald's disciplinary career is potent evidence that he was no lone gunman. Oswald was useful to a conspiracy to kill the President, according to this logic, precisely because he was already coded with so many cultural associations that he would satisfy the need for a patsy.³³ In my view, however, the density of the sources behind the Warren Commission's knowledge about Oswald indicates the capacity of disciplinary society to establish knowledge of the self as a routine matter, and it suggests

31. In one of his manuscripts, Oswald described the USSR as "the collective" and emphasized its disciplinary burdens. See WARREN COMMISSION, REPORT, *supra* note 2, at 395-96.

32. WARREN COMMISSION, WITNESSES, *supra* note 1, at 266 (testimony of Ruth Paine).

33. See, e.g., DELILLO, *supra* note 8, at 75.

the usefulness of considering the Commission's life-history of Oswald within a Foucauldian frame of analysis.

Of the entire body of biographical materials on Oswald considered by the Commission, none was more influential in establishing the basic picture of a psychologically motivated assassin than the records created through an encounter Oswald had with the juvenile justice system of New York City in 1953 at age thirteen, an encounter stemming from Oswald's chronic absence from school.³⁴ On the basis of his repeated truancy, Judge Leonard Sicher declared Oswald to be beyond the control of his mother and he was remanded for several weeks of examination to the New York City Youth House, a diagnostic and treatment center for juvenile delinquents. Once there, Oswald was observed and interviewed by a range of professionals, including a psychiatrist, a psychologist, a social worker, and a probation officer. He was subjected to a variety of tests designed to reveal emotional and cognitive aberration, and was also subjected to extensive one-on-one interviews. These interviews were assembled into a dossier submitted to the New York Family Court, documenting and explaining the young Oswald's social and psychological condition. The report recommended that the court release Oswald on probation, though it also suggested that the court consider incarcerating him for psychological treatment if his truancy continued.³⁵

The Warren Commission was not the first organization to use the psychological reports of the Youth House to explain the Kennedy assassination. In December 1963, for instance, the *New York Times* published an extensive story on Oswald, *Lee Harvey Oswald—The Man & the Mystery*, based on the Youth House dossier and interviews with Oswald's probation officer, John Carro, and his psychiatrist, Dr. Rhenatus Hartogs.³⁶ According to the story, the psychiatric profile of the thirteen-year-old Oswald had indicated that he had "schizophrenic tendencies" and predicted that he was "potentially dangerous."³⁷ "This examination . . .," explained reporter Donald Jackson, "found Oswald to be full of anger although outwardly calm. It found he had fantasies involving violence. The fatherless boy had a hatred of authority, fixated on a father symbol. His personality was unfulfilled,

34. See WARREN COMMISSION, REPORT, *supra* note 2, at 379-83.

35. Oswald's own assassin, Jack Ruby, who also has long perplexed readers of the Warren Report, had a similar history of involvement with the juvenile justice system: Ruby was a client of Chicago's juvenile courts in the 1920s. As with Oswald, Ruby's court files were critical in assembling a picture of him as an individual suffering from personality defects large enough to explain his astonishing actions in Dallas. See WARREN COMMISSION, REPORT, *supra* note 2, at 781.

36. See Donald Jackson, *Lee Harvey Oswald—The Man & the Mystery*, N.Y. TIMES, Dec. 8, 1963, at G4.

37. *Id.*

reclusive, aggressive.”³⁸ An even longer version of Jackson’s reporting was published in *Life* under the title *The Evolution of an Assassin*.³⁹ The article, which was accompanied by the first publication of photos of Oswald as a toddler, child, and youth, emphasized that clear signs of Oswald’s capacity for assassination were visible in his young personality. Probation officer John Carro, who had since become an assistant to New York Mayor Robert Wagner, was presented as having urged that Oswald be institutionalized. “In my report,” Carro explained, “I indicated this was a potentially dangerous situation—dangerous to his personality.”⁴⁰ The story also noted that the report of Dr. Hartogs was then before the Warren Commission and strongly implied that if the doctor’s diagnosis had been acted upon, it would have altered history. (The Oswalds left New York before his recommendations could be implemented.) “Dr. Hartogs’s report was sent to Children’s Court with the recommendation that the child be committed to an institution for his own protection and that of the community at large,” wrote Jackson.

He felt that treatment might have led to improvement, that ultimately the boy would be rehabilitated. . . . The psychiatrist said he was not surprised when Lee Oswald was arrested for the assassination of President Kennedy. “Psychologically,” he said, “he had all the qualifications of being a potential assassin.”⁴¹

While such stories included materials on Oswald’s life before and after his Youth House encounter (accounts of his fellow marines, for instance, described him as a shy and awkward young man), only the Youth House dossier suggested that minor deviations were the seeds of future disaster.

While the Warren Report itself soberly de-emphasized the predictive value of the Youth House dossier—the Commission asserted that “[t]he psychiatric examination did not indicate that Lee Oswald was a potential assassin . . . or that he should be institutionalized”—it similarly presented its normalizing experts as documenting a clear trend in Oswald toward serious psychological and behavioral problems.⁴² The Commission gave its greatest attention to Dr. Hartogs, the Youth House psychiatrist. In his testimony before the Commission, Hartogs summarized his own earlier report on Oswald this way:

38. *Id.*

39. Donald Jackson, *The Evolution of an Assassin*, LIFE, Feb. 21, 1964, at 68A.

40. *Id.* at 71.

41. *Id.* at 72.

42. WARREN COMMISSION, REPORT, *supra* note 2, at 379.

This 13 year old well built boy has superior mental resources and functions only slightly below his capacity level in spite of chronic truancy from school which brought him into Youth House. No finding of neurological impairment or psychotic mental changes could be made. Lee has to be diagnosed as "personality pattern disturbance with schizoid features and passive-aggressive tendencies."⁴³

Such testimony, laden with the jargon and turns of phrase of the normalizing expert, presented three themes that the Warren Report traced throughout Oswald's life: his alienation, his volatile fantasy world—and, most importantly, the inadequacies of his parenting, a subject to which I will return shortly.

Lee is the product of a broken home—as his father died before he was born. Two older brothers are presently in the United States Army—while the mother supports herself and Lee as an insurance broker. This occupation makes it impossible for her to provide adequate supervision of Lee and to make him attend school regularly. Lee is intensely dissatisfied with his present way of living, but feels that the only way in which he can avoid feeling unhappy is to deny to himself competition with other children or expressing his needs and wants. . . . Lee has [a] vivid fantasy life, turning around the topics of omnipotence and power, through which he tries to compensate for his present shortcomings and frustrations. He did not enjoy being together with other children and when we asked him whether he prefers the company of boys to that of girls—he answered—"I dislike everybody."⁴⁴

The Report quoted a second source from the Youth House dossier: the evaluation of Oswald made by Dr. Irvin Sokolow, a psychologist who conducted projective figure drawing tests on the truant. Using a conceptual language different from but related to that used by Hartogs, Sokolow also painted Oswald as an alienated and vaguely dangerous character:

The Human Figure Drawings are empty, poor characterizations of persons approximately the same age as the subject. They reflect a considerable amount of impoverishment in the social and emotional areas. He appears to be a somewhat insecure youngster exhibiting much inclination for warm and satisfying relationships to others. There is some indication that he may

43. *Id.* at 380.

44. *Id.* at 301; see also *8 Investigation of the Assassination of President John F. Kennedy, 1964: Hearings Before the President's Commission on the Assassination of President Kennedy 223* (1964) [hereinafter *Hearings*] (testimony of Dr. Renatus Hartogs).

relate to men more easily than to women in view of the more mature conceptualization. He appears slightly withdrawn and in view of the lack of detail within the drawings this may assume a more significant characteristic. He exhibits some difficulty in relationship to the maternal figure suggesting more anxiety in this area than in any other.⁴⁵

The Warren Commission was placed in the significant position of both drawing on this deposit of disciplinary knowledge for its own conclusions and implicitly passing judgment on the adequacy of New York's penocorrectional response to Oswald. In this regard, the Report specifically rejected the view that the New York authorities failed. "It would be incorrect, however, to believe that those aspects of Lee's personality which were observed in New York could have led anyone to predict the outburst of violence which finally occurred."⁴⁶ Instead, quoting Evelyn Siegel, the social worker assigned to young Oswald, the Report stressed both the potential dangers and the possibility of rehabilitation that characterized Lee at thirteen. "Despite his withdrawal," noted Siegel,

[Oswald] gives the impression that he is not so difficult to reach as he appears and patient, prolonged effort in a sustained relationship with one therapist might bring results. There are indications that he has suffered serious personality damage but if he can receive help quickly this might be repaired to some extent.⁴⁷

The Report's ultimate evaluation of the Youth House dossier in this way legitimized its disciplinary sources of knowledge, asserting that while the system ultimately failed at criminal prevention, it had succeeded remarkably in identifying the potential danger in young Oswald and taking steps that should have led to its avoidance.

Beginning with the Youth House dossier, the Commission probed further into Oswald's life, following him through one disciplinary institution after another. After his trouble with juvenile court, for instance, Oswald enlisted at age seventeen in the United States Marine Corps. For the Commission, understandably, Oswald's marine service did not provide so strong a picture of his internal pathologies as did his Youth House experience. The military, after all, is a disciplinary institution shaped by the first, pre-Progressive stage of disciplinary power and emphasizes the importance of correcting manifest behavior rather than adjusting mental and emotional states.

45. WARREN COMMISSION, REPORT, *supra* note 2, at 381.

* 46. *Id.* at 382.

47. WARREN COMMISSION, WITNESSES, *supra* note 1, at exhibits 25.

Still, the marines assiduously recorded Oswald's series of transgressions and misbehaviors (which included two court martial proceedings: one for possession of an unauthorized weapon and another for spilling a drink on an officer in an effort to provoke a fight), as well as his superiors' evaluations of his performance and prospects.⁴⁸ And here, as in the Youth House dossier, the Commission found behavior signals that could have been seen as portents of looming disaster. Most importantly, Oswald's marine career revealed a young man marked primarily by a struggle against rules and disciplines. "While there is nothing in Oswald's military record to indicate he was mentally unstable or otherwise psychologically unfit for duty in the Marine Corps," explained the Commission,

he did not adjust well to conditions which he found in that service. He did not rise above the rank of private first class, even though he had passed a qualifying examination for the rank of corporal. His Marine career was not helped by his attitude that he was a man of great ability and intelligence and that many of his superiors in the Marine Corps were not sufficiently competent to give him orders.⁴⁹

This judgment of Oswald's incapacity for normalized behavior was reinforced by the Commission's evaluation of Oswald's educational and professional career. The Commission tracked Oswald through every school and every job he had ever held, and the picture produced by this history was that of the classic ne'er-do-well who was incapable of holding even menial jobs (sometimes leaving them suddenly, sometimes being fired), and who was too uneducated and emotionally unstable to sustain the more intellectually challenging employment he craved and occasionally received.

From Oswald's career as a marine and his work history, the Warren Commission probed still further. The staff devoted particular attention to Oswald's family life, searching for every indication of his having been harmed by his childhood circumstances—and especially, as I explain below, by his mother. How did Oswald react to being placed in the orphan's home? To his mother's divorce from her third husband? To her frequent moves? To sleeping in the same bed with her until he was eleven?⁵⁰ Just where did the origin of the assassination lie? What archive of written or remembered knowledge held the truth of Kennedy's death? The Commission similarly examined Oswald's marriage to Marina Nikolayevna Prusakova, whom Oswald

48. See WARREN COMMISSION, REPORT, *supra* note 2, at 386.

49. *Id.* at 689.

50. See WARREN COMMISSION, WITNESSES, *supra* note 1, at 371.

met at a dance during his two-year defection to the Soviet Union, that disciplinary society *par excellence*.⁵¹ The young couple's life upon returning to the United States was difficult. In a few short years, they moved from Fort Worth to Dallas to New Orleans and back again to Dallas, as Oswald sought work and pursued whatever strange destiny he was recognizing. Prusakova and Oswald separated frequently, and the testimony gathered by the Commission documents that Oswald was an abusive husband and batterer.⁵² Oswald loathed any sign of independence in his wife—he refused to teach her English and resented when her friends in the Russian exile community did so—and he hit her frequently for such acts of disobedience as smoking or drinking, both of which he forbade, and for failing to act sufficiently deferential toward him in front of others.⁵³ (Some witnesses, including Marguerite Oswald, defended Lee's battering as an appropriate response to his wife's constant nagging, spending habits, and public displays of contempt.⁵⁴) Significantly, the Commission ultimately did not infer the same importance from testimony concerning Oswald's marital discord as it did from evidence about his days in the marines or, more centrally, the Youth House. Such behavior indicated that Oswald was a volatile and potentially violent man, but it did not mark him as a pathological type. In 1963, violence against one's wife, unlike truancy, was not a portent of future criminal behavior. Moreover, the evidence of Oswald's battering was provided mainly by his wife and women close to her, sources whose gender and lack of psychological expertise may have lent them little epistemological authority before the Commission.⁵⁵

Chapter seven of the Warren Report ends without attempting to integrate all the information about Oswald drawn from his institutional history.⁵⁶ While the Report draws a straight line of individual

51. On the disciplinary features of workers' lives in the Soviet Union, see STEPHEN KOTKIN, *MAGNETIC MOUNTAIN: STALINISM AS A CIVILIZATION* 102-25, 196-97 (1995).

52. See WARREN COMMISSION, REPORT, *supra* note 2, at 710.

53. See *id.* at 720.

54. See 1 *Hearings*, *supra* note 44, at 139 (testimony of Marguerite Oswald). Such assertions were particularly ironic because, as I discuss below, Marguerite Oswald herself was accused of the same nagging behavior and also was subjected to her son's physical violence.

55. See WARREN COMMISSION, REPORT, *supra* note 2, at 720.

56. "Many factors were undoubtedly involved in Oswald's motivation for the assassination," concludes the Report.

[T]he Commission does not believe that it can ascribe to him any one motive or group of motives. It is apparent, however, that Oswald was moved by an overriding hostility to his environment. He does not appear to have been able to establish meaningful relationships with other people. He was perpetually discontented with the world around him. . . . He also had demonstrated a capacity to act decisively and without regard to the consequences when such action would further his aims of the moment. Out of these and many other factors which may have molded the character of Lee Harvey Oswald there emerged a man capable

pathological development leading from Oswald's birth to November 22, 1963, it ultimately leaves Oswald the man something of a mystery. For the narrative purpose of the Report as a whole, it was not necessary to solve the puzzle of Oswald himself fully. It was only necessary to show that there was a puzzle, and that its solution, which held the truth of the assassination, lay deep within the interstices of his life-history. In early 1964, with rumors of Soviet, Cuban, or CIA roles in the assassination, it was enough for the Report merely to proclaim the absence of any political threat against national security, merely to proclaim that Oswald had acted alone. Still, for the close reader, there was a darker implication to the Report's interpretation of the events at Dealey Plaza. For if Oswald were just another aging juvenile delinquent, a rebel without a cause, a person quite normal in many respects but who also acted out his fantasies on a grand scale, then he also could be seen as a harbinger of a potential violence brewing throughout the United States. And if this were the case, the need to know the origins of his mental pathology became imperative not just for the purpose of explaining Kennedy's assassination: Oswald's personality took on implications far larger than those concerning an individual act of political murder. This implication received explicit treatment in several mass-market books produced in the aftermath of the Report, including *The Two Assassins*, coauthored by none other than Dr. Hartogs, Oswald's psychiatric examiner from his days in Youth House.⁵⁷ Hartogs had no doubt as to the conclusions that must be drawn from the Warren Report's findings about Oswald. "It is too simple to dismiss the assassination of the President, or the death of his assassin at the hands of another man, as some hideous accident of fate or chance," he wrote.⁵⁸ "It is false thinking as well. If we are to understand why men act as they do, we cannot accept assassination and murder as merely matters of happenstance."⁵⁹ In this respect, Hartogs suggested undertaking an even more thorough individualizing inquiry than the Commission already had conducted. "To understand the making of an assassin," he wrote, "we need to know something about the world into which he was hurled at birth."⁶⁰

According to Hartogs, and implicitly according to the Warren Report—indeed, according to the variety of popular interpretations of Oswald's life published in the wake of the Commission's work—the

of assassinating President Kennedy.

Id. at 423-24.

57. RENTUS HARTOGS & LUCY FREEMAN, *THE TWO ASSASSINS* (1965).

58. *Id.* at 4.

59. *Id.*

60. *Id.*

world into which Oswald was hurled and the social field in which he operated were constituted above all by his mother, Marguerite.

It is curious, in this respect, that Oswald did not, in fact, become more of an enduring exemplar of the importance of the normalizing institutions and professions. The press did initially treat the Youth House psychiatrist, Dr. Hartogs, as having successfully predicted Oswald's potential for violence. As I noted, a year after the Warren Report was published, Hartogs published his own work on the subject, consisting largely of the Oswald and Ruby life-history portions of the Report along with his professional psychiatric commentary. But Oswald as deviant did not remain among the preferred readings of what happened in Dallas. That reading ultimately faded into the background of cultural life. How can one explain this disappearance? Perhaps by 1963, anticommunism had usurped and exhausted the space once occupied by the problems of deviant individuals and communities. The mobilization of social paranoia about what future evils were breeding in disorganized ghettos, defective families, and exploitive industrial relations had been subsumed in the theme of total confrontation with the Soviet Union and its allies. By the later 1960s, when the communist scare had run its course domestically (witness the lack of interest in the wholly plausible narrative of Oswald as victim of communist propaganda⁶¹), disciplinary institutions were under broad social attack and so could no longer sustain a telling of Oswald's tale based on the epistemological vision that justified their original expansion.

Having examined some of the institutional ghosts that haunt the Warren Report's vision of criminological truth, I now turn to a ghost that itself haunted those institutions: the virulent conceptions of motherhood, so prominent in American culture at midcentury, that implicitly shaped the Commission's depiction of Marguerite as the ultimate source of Oswald's pathology and the nation's loss.

IV. A MOTHER IN HISTORY

In an implicit but fundamental way, the Warren Report expresses a kind of ironic sympathy toward Lee Harvey Oswald. After all, Ely, Weinreb, and Mosk had traced Oswald's crime to a location in which his own individual responsibility was reduced, and had suggested that the meaning of the Kennedy assassination lay in the complexities of Oswald's life-history. One thinks again of the words of Foucault:

61. One book that read the Kennedy assassination as a story of communist subversion was written by Carlos Brineguier, an anti-Castro Cuban activist in New Orleans who debated Oswald on a local television show just months before the President's death. See CARLOS BRINEGUIER, *RED FRIDAY: NOV. 22ND, 1963* (1969).

Behind the offender to whom the investigation of the facts may attribute responsibility for an offense stands the delinquent whose slow formation is shown in a biographical investigation. . . . [O]ne sees penal discourse and psychiatric discourse crossing each other's frontiers; and there, at their point of junction, is formed the "dangerous" individual, which makes it possible to draw up a network of causality in terms of the entire biography.⁶²

Behind Oswald the assassin stood the delinquent slowly forming, and it is difficult to look at Oswald's chronicle of missed possibilities and unfulfilled dreams without feeling a certain amount of pity. Moreover, as those who recall November of 1963 can attest, Oswald's death had come so soon after the assassination of the President that for many, the two deaths could be said to run together. Oswald was both killer and victim, caught in a terrible, tragic event. He was an individual who died without being given the chance to counter the charges leveled against him, an untried and unconvicted man, killed in the hands of the police to whom he had surrendered his capacity for self-defense. It is little wonder that the Commission was prepared to feel sorry for Oswald so long as it could trace the meaning of the assassination to him alone. A sense of honor among men required no less. Finally, and most importantly, there was a dark and unattractive figure lurking behind Lee Harvey Oswald to whom no honor among men was due: Marguerite Oswald. If the truth of Kennedy's murder lay in the personality of Lee Oswald, then in the Commission's view, Marguerite literally was the progenitor of the crime. The alienated figure hostile to authority described by chapter seven, the assassin in whose life-history lay the truth of a republican regicide, began as a child formed above all by his experiences with his mother. Throughout the Report, through continual suggestion, the Warren Commission comes close to defining Marguerite as the true assassin of the President.

In order to understand the Commission's depiction of Marguerite Oswald, it is important to recognize the deep ambivalence concerning the role of motherhood prevalent in mainstream American culture at midcentury. On the surface, of course, our society has celebrated motherhood as an institution. One need only think of popular visions of American life after World War II, such as *Father Knows Best*, *The Donna Reed Show*, or *Leave it to Beaver*. The 1950s and early 1960s were pervaded by an ideology of domesticity, and the figure of the mother in her suburban kitchen was an image of all that was good in

62. FOUCAULT, *supra* note 4, at 24.

the age of Eisenhower and Kennedy. On a more fundamental level, however, as a rich tradition of feminist scholarship has shown, conceptions of motherhood at midcentury were also deeply encoded with the signs of patriarchal gender domination, filtered through the intersection of race and class. As Martha Fineman has noted, "Motherhood has always been, and continues to be, a colonized concept—an event physically practiced and experienced by women, but occupied and defined, given content and value, by the core concepts of patriarchal ideology."⁶³

Most centrally for my purposes, as Michael Rogin has argued, motherhood during the Cold War became the site for a whole host of anxieties concerning the emasculating effects of an organizational society and the complex double role of the bureaucratic state as both communist menace and American democratic savior.⁶⁴ In particular, as Rogin notes, one of the key themes animating Cold War images of motherhood was the danger of mothers attempting to displace paternal power. Emotional perversity and, ultimately, serious threats to national security could result when a father was unable to interfere with the oedipal longings between mother and child because of his wife's overreaching her prescribed familial role.⁶⁵ In this vision of motherhood, young American sons were said to become susceptible to communist agents after being rendered psychologically vulnerable by their mothers' unnatural desire for closeness.⁶⁶ The mother was no longer the benevolent mom in her suburban kitchen, but was instead a monster who posed a subversive danger to the sovereign state—a danger to be solved, as Rogin further notes, through the vigorous assertion of masculine familial authority and the construction of an extensive national security apparatus.

One finds this image of the mother as political threat throughout American culture before and during the Cold War. Philip Wylie's notorious *Generation of Vipers*,⁶⁷ first published in 1942 but popular throughout the 1950s, is a classic example.⁶⁸ Well known as a magazine and fiction writer, Wylie depicted American women as

63. Martha L. Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274, 290; see also Marlee Kline, *Complicating the Ideology of Motherhood: Child Welfare Law and First Nation Women*, 18 QUEENS L.J. 306 (1993) (discussing the ideology of motherhood under patriarchy); Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1 (1993) (same).

64. See Michael P. Rogin, *Kiss Me Deadly: Communism, Motherhood, and Cold War Movies*, in RONALD REAGAN, THE MOVIE: AND OTHER EPISODES IN POLITICAL DEMONOLOGY 236, 255 (Michael Rogin ed., 1987).

65. See Rogin, *supra* note 64, at 245.

66. See *id.*

67. PHILIP WYLIE, *GENERATION OF VIPERS* (1942).

68. See Rogin, *supra* note 64, at 242.

leisure class members whose psychologically manipulative ways scarred future generations and created a venal, helpless population that might well succumb to the “Japs,” Nazis, or Russians. In Wylie’s view, “momism” ultimately was responsible for “a new all-time low in political scurviness, hoodlumism, gangsterism, labor strife, monopolistic thuggery, moral degeneration, civic corruption, smuggling, bribery, theft, murder, homosexuality, drunkenness, financial depression, chaos and war.”⁶⁹ On a more subtle note, the political threat associated with motherhood frequently was explored in the popular cinema, particularly in the series of anticommunist thrillers produced during and just after congressional investigations into communist influences in Hollywood. In the 1952 film *My Son John*, for example, Helen Hayes plays a well-intentioned but emotionally unbalanced woman whose overly possessive relationship with her youngest son interferes with his masculine socialization and leaves him vulnerable to communist propaganda.⁷⁰ *The Manchurian Candidate* treated this same theme even more explicitly in an ominous presaging of the Warren Report’s depiction of motherhood, which appeared only ten years later.⁷¹ Starring Frank Sinatra and Laurence Harvey, the thriller involves an American military patrol in Korea that is captured and taken to a communist base in Manchuria. There, its members are “brainwashed” to remember a false series of events in which one patrolman, Laurence Harvey, purportedly saved the group from a North Korean ambush; in the meantime, Harvey himself is programmed to act as a compliant assassin with a mission to kill the President. Angela Lansbury plays Harvey’s overbearing mother in the film, a mother/monster who constantly strives to manipulate the lives of both her son and his stepfather, a McCarthyite senator and weak-willed alcoholic. In a prolonged and cinematically highlighted moment, Lansbury kisses her son deeply on the lips, and in the film’s stunning conclusion, she is revealed to be the communist agent in charge of deploying her programmed son on his assassination attempt.

Marguerite Oswald was an ideal magnet for such cultural associations. A working-class woman from the south with only a ninth-grade education—and, most importantly, a single mother, twice divorced, who worked full time for most of her adult life—she embodied a multifaceted marginality that surfaced quickly under the intense media glare following the assassination. In the months after Kennedy’s death, this unconventional person, leading a terribly difficult life, became a primary target for public ridicule and anger.

69. *Id.* at 201.

70. *MY SON JOHN* (Paramount Pictures 1952).

71. *THE MANCHURIAN CANDIDATE* (United Artists 1962).

Not only did the news media relentlessly identify everything “abnormal” about her life as possible sources of her son’s pathology, but she also became a central figure in several popular books about the assassination. Most notable among these efforts was *A Mother in History* by Jean Stafford, a long, edited interview with Marguerite interspersed with the author’s cutting remarks.⁷² Originally published as an article in the *New Yorker*, Stafford’s book ironically took its title from Marguerite’s own moving explanation of her role as a parent:

Now I’m patting myself on the back as a mother only so that the people will understand. Why am I so concerned that the people will understand? It is natural because I am a mother in history. I am in twenty-six volumes of the Warren Report, which is all over the world, so I must defend myself and defend my son Lee.⁷³

A representative of the cultural and literary elite, and a personal acquaintance of the deceased President, Stafford found in Marguerite’s unrefined language and personal manner endless opportunities for displaying her monstrosity. Then-Representative Gerald Ford, who served as a member of the Warren Commission, made a point similar to Stafford’s in an article for *Life*. “There was the mother, Mrs. Marguerite Oswald,” wrote Ford of Kennedy’s death, “a singularly angry woman whose strange attitudes and actions provided an appropriate background for the strange son she had shaped.”⁷⁴ Such coverage was compounded by Marguerite’s own predictable lack of sophistication in public relations. Her comments were frequently scattered and repetitive. Her testimony and interviews mixed harangue with uncomfortable appeals for personal empathy. She often complained that other figures, such as her son’s wife Marina, were getting more attention and publicity than she was.

While avoiding any express condemnation of Marguerite, chapter seven of the Report provides an implicit indictment of her failures as a mother, depicting her in a manner that closely conforms to the Cold War cinematic images of motherhood discussed by Rogin and others. The Report strongly implies that Marguerite sought too much closeness with her son. John Pic, Marguerite’s oldest son and Lee’s half brother, was quoted in the Report as recalling that “Lee slept with my mother until I joined the service in 1950. This would make him approximately 10, well, almost 11 years old.”⁷⁵ This sense of unnatural sexual interest between mother and son was already part of

72. JEAN STAFFORD, *A MOTHER IN HISTORY* (1965).

73. *Id.* at 25.

74. HARTOGS & FREEMAN, *supra* note 57, at 39.

75. WARREN COMMISSION, REPORT, *supra* note 2, at 382.

the picture drawn by the New York clinicians. Social worker Evelyn Siegel's report of her interview with Marguerite, published as part of the Commission's exhibits, noted Marguerite's interest in certain abnormalities on Lee Oswald's penis.⁷⁶ The Report linked this unnatural interest to Marguerite's supposed efforts to prevent a father figure from coming between them, a mission evidenced for the Commission by her departure from New York just as the juvenile justice system was prepared to subject Oswald to treatment. Here, again, the Commission relied on the work of Dr. Hartogs, who had prescribed a course of therapy and counseling for both Lee and his mother. The Report summarized Hartogs's findings by paying particular attention to issues of gender identification. "Dr. Hartogs recommended that Oswald be placed on probation on condition that he seek help and guidance through a child guidance clinic," the Report noted.⁷⁷ "There, he suggested, Lee should be treated by a male psychiatrist who could substitute for the lack of a father figure. He also recommended that Mrs. Oswald seek psychotherapeutic guidance through contact with a family agency."⁷⁸ The Report also quoted extensively from the Youth House dossier in highlighting the conclusion that Marguerite lay behind the thirteen-year-old Oswald's problems:

The reports of the New York authorities indicate that Lee's mother gave him very little affection and did not serve as any sort of substitute for a father. Furthermore she did appear to understand her own relationship to Lee's psychological problems. After the interview with Mrs. Oswald, Mrs. Siegel described her as a "smartly dressed, gray haired woman, very self-possessed and alert and superficially affable," but essentially a "defensive, rigid, self-involved person who had real difficulty in accepting and relating to people" and who had "little understanding" of Lee's behavior and of the "protective shell he has drawn around himself." Dr. Hartogs reported that Mrs. Oswald did not understand that Lee's withdrawal was a form of violent but silent protest against his neglect by her and represents his reaction to a complete absence of any real family life.⁷⁹

The Commission's depiction of Marguerite's failings as a mother was amplified by the account of her willful subversion of the state's efforts to succeed where she had failed as a parent. This characterization of the single mother as a problem that needs to be solved through the

76. See WARREN COMMISSION, WITNESSES, *supra* note 1, at exhibits 22.

77. WARREN COMMISSION, REPORT, *supra* note 2, at 380.

78. *Id.*

79. *Id.* at 380-81.

imposition of a paternal authority figure is one that has come to have an enduring role in public discourse, exercising a pervasive influence, for instance, on discussions of welfare policy.⁸⁰ A few years later the single mother would emerge as a challenge to national security in the Moynihan Report.⁸¹ In the context of the Warren Report, however, the Oswald single-parent household was not so much a problem to be solved as a cultural narrative waiting to anchor an account of the Kennedy assassination in social and psychological terms.⁸²

Following on the evidence provided by the Youth House, the Commission consistently sought to elicit criticism of Marguerite from its witnesses, including her surviving sons, John Pic and Robert, and her sister, Lillian Murrets. Assistant Counsel Albert Jenner's questions to Lee's brother Robert marked out a pathological line of cross-examination that runs throughout the volumes of testimony and exhibits that accompanied the Warren Report: "I take it, Mr. Oswald, your mother put Lee in the orphan home at the first opportunity open to her under the rules or policy of the Bethlehem Orphan Home in that respect."⁸³ "[Was Marguerite] able to give the normal and full time and attention of a mother to her son Lee?"⁸⁴ "Would you relate for us as you recall now the relationships between you and John [Pic]—between you boys and your mother? Was that a pleasant one? Were there any difficulties that you now recall? Personality-wise, for example."⁸⁵

One of the central themes in the Report's representation of Marguerite was that she was too distant a figure in Oswald's life, and that she chose to work not because of economic necessity, but because she desired to shake off the burdens of mothering. What is so striking in this respect is how much evidence in Marguerite's testimony there was to the contrary, how easily one can provide a different interpretation of her life. Marguerite was seven months pregnant with Lee when her second husband, Robert Oswald, died in his sleep of a massive coronary.⁸⁶ After his death, she used his life insurance proceeds to purchase a small house, in front of which she

80. See Fineman, *supra* note 63, at 276.

81. The Moynihan Report is the popular name for OFFICE OF POLICY PLANNING & RESEARCH, U.S. DEP'T OF LABOR, THE CASE FOR NATIONAL ACTION—THE NEGRO FAMILY 30 (1965); see also LEE RAINWATER & WILLIAM L. YANCEY, THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY 246-47 (1967).

82. See sources cited *supra* note 63. Fineman points out that one of the functions of the image of the single mother as a problem in welfare discourse is precisely to turn discussion away from the social and economic factors underlying the condition of poor families. See Fineman, *supra* note 63, at 275.

83. 1 *Hearings*, *supra* note 44, at 272-73 (statement of Albert Jenner).

84. *Id.* at 279.

85. *Id.* at 281.

86. See WARREN COMMISSION, REPORT, *supra* note 2, at 670.

opened "Oswald's Notions," a shop that sold thread, cleaning items, and other conveniences. This provided a way for her to earn money while staying with her children. Only after that business failed did Marguerite enter the general labor market, holding a series of jobs ranging from low-level clerical work to serving as an insurance broker.⁸⁷ It was only once she was required to work full time that she arranged to have her older boys placed in a home for orphans and the children of single mothers. The home apparently would not take Lee because he was too young; instead, he was cared for by his aunt, a woman with five children of her own, and later, when Marguerite's relationship with her sister soured, by a couple Marguerite took into her own house in exchange for rent and child care.⁸⁸ (Lee ultimately spent about one year in the orphan home, from ages three to four.)

One can only imagine the great social and economic difficulties Marguerite faced as she attempted to take care of her son once she had retrieved him from the orphanage. Yet the Warren Report condemned her, in terms that sound quaint today, for frequently leaving Lee "in an empty house" to fend for himself for meals ("his mother having trained him to do that rather than to play with other children," the Commission asserted).⁸⁹ The Report cited Youth House social worker Evelyn Siegel's diagnosis in this regard, linking Lee's psychological problems to Marguerite's neglect:

He withdrew into a completely solitary and detached existence where he did as he wanted and he didn't have to live by any rules or come into contact with people. He stayed in bed until eleven or twelve, got up When he was asked if he wished that she would do something [about his truancy] he nodded and finally emerged with the fact that he just felt like a burden she had to tolerate, and while she took care of the material needs, he never felt that she was involved with him in any way or cared very much what happened to him.⁹⁰

Again, Marguerite's own explanatory statements concerning her life implicitly were ignored or given little attention, submerged in the imperative to construct an image of the mother/monster who posed a risk to national security. When her own statements were repeated in the Warren Report and elsewhere, they generally were placed in a context or presented in a way that made her seem defensive and

87. *See id.*

88. Moreover, Marguerite terminated the child care arrangement after she learned that the couple had taken to whipping Lee to quiet him. She fired the couple on the spot. *See id.* at 671.

89. *Id.* at 378.

90. WARREN COMMISSION, WITNESSES, *supra* note 1, at exhibits 19-20.

self-pitying. In fact, however, these are words that, when read on their own, are moving accounts of a woman's hardship:

I'm a good woman, a good, honest woman. . . . I had raised my children alone and had struggled, not only financially, but was always tired and had no life of my own. In other words, as soon as I came home from work, my children wanted their food, so immediately I started working again. I sort of lived for the day when my children would find a good woman and marry and have somebody to take care of them, because it was almost impossible for me to work and to do justice to those boys.⁹¹

Such pleas of necessity were undermined by the unexplicated assumption that a proper mother would have found and subordinated herself to a male figure willing to share the burden of parenting.

Not surprisingly, from the start, Marguerite was one of the most radical challengers to the Commission's claims, as well as one of the most outspoken supporters of a conspiracy theory of the assassination. While many of her theories contained racist implications or were simply bizarre, reading her testimony and interviews thirty years later can be a deeply affecting experience.⁹² Marguerite's words may be comical, but they also are disturbing—and sometimes, extremely insightful.⁹³ In particular, Marguerite's testimony reflects a deep appreciation of how important the construction of Lee's life-history was to the Commission's work. She understood that Lee's biography would be the conceptual foundation for the Warren Report, and from the start, she tried to tell her son's story in her own way, against the Commission's efforts to cut off her narrative. “—Well, aren't you gentlemen— . . . aren't you gentlemen interested in my son's life from the very beginning?” she exclaimed.

I think you should, because it has been exploited in all the magazines and papers. And this is not my son is what I am trying

91. *Id.* at exhibits 20.

92. In the latter category is her grotesque suggestion to Jean Stafford, based on the then-emerging reports of Kennedy's hidden medical problem (Addison's disease), that her son may have been a government agent on a mission to rescue the country from a sickly President. See STAFFORD, *supra* note 72, at 15.

93. “On some Mother's Day, I think it would be wonderful for the United States to come out and say my son was an agent. It would be wonderful if they would come out in behalf of his family and his mother and say he died in the service of his country. They're not all-powerful, and not everything they do is right. I love my United States, but I don't think just because I was born in it, that we're perfect. And I feel that my son Lee Harvey Oswald felt the same way. If he learned those truths from me, I didn't teach him, but if he sensed that was the way I felt, I make no apology for it either.” *Id.* at 105-06. Against the cautious and lawyerly text of the Warren Report, such language seems shameless, loud, and hyperbolic; but perhaps we still cannot hear Marguerite apart from the potent nexus of misogynist images of domineering mothers, gender deviates, and political insecurities that characterized the era of the Warren Report.

to say. He is not a perfect boy, and I am not a perfect woman. But I can show a different side of Lee Harvey Oswald, which I hope to do to this Commission.⁹⁴

Marguerite sought to create a biography that would undercut the life-history of Lee's deviance constructed by the Commission. While Warren and his staff traced a line of evidence reflecting Oswald's pathologies, Marguerite assembled her own genealogy of his "normal" traits. "My child was a normal child . . .," she recalled.⁹⁵ "I explained to you he had a dog with puppies. The school teachers talked well about him. He had a bicycle. There was nothing abnormal about Lee Oswald."⁹⁶ Even if unconvincing to her contemporaries, Marguerite's narrative points with considerable precision to the elements of the Commission's life-history. And if her proclamations of her boy's "normality" were self-serving, they remind us that the far more persuasive Commission account rests on the cultural judgments of disciplinary "experts" embedded in their own institutionalized failures. At times, Marguerite gestured toward a picture of her son in which his act at Dealey Plaza was the precise consequence of the disciplinary institutions that sought to normalize his behavior throughout his life. Where the Commission portrayed her as the source of Lee's dangerous path of deviation, she blamed the very institutions that provided the knowledge upon which the Commission drew. "I find these things very interesting," she told Jean Stafford, "because as I'm researching Lee's life—and I'm not the only one—it looks as though this boy's life has been supervised. But if I stress this, they say, 'This woman is out of her mind. Let's put her in a mental institution.' Isn't it silly?"⁹⁷

In this respect—and with implications I will consider in greater detail in a moment—the Commission's portrait of Marguerite shows a woman engaged in a lifelong struggle with the effort of disciplinary institutions to define her and her family as deviant and dangerous, a woman whose actions consistently exhibited her unarticulated assumption that those institutions were themselves a source of pathology. Here, again, her son's experience with the Youth House is revealing. The notes of social worker Evelyn Siegel document not only Lee Harvey Oswald's psychological state, but also his mother's. Marguerite exhibited an openly combative stance toward the entire juvenile justice system. "Her feeling was that New York City laws were in a large measure responsible for Lee's continued truancy,"

94. 1 *Hearings, supra* note 44, at 195 (statement of Marguerite Oswald).

95. *Id.* at 230.

96. *Id.*

97. STAFFORD, *supra* note 72, at 22.

reported Siegel, “and that if they had left things for her to handle, she could have managed him. . . . She thought the biggest mistake was the way the Bureau of Attendance approached the boy, and [she] said they were making a ‘criminal out of him.’”⁹⁸ Similarly, after Lee was released from the Youth House, when probation officer John Carro told Marguerite that her son would be required to report to him weekly, she emphatically objected. Recalling her conversation with Carro to the Commission, Marguerite explained:

So I was very definite with Mr. Carro. I did not mince my words. I said, “Mr. Carro, my son is not reporting to you once a week. This is not a criminal offense. He was picked up for truancy, he has assured the judge, promised the judge that he would be back to school. He has promised you he would be back to school. Let’s give this boy a chance, let’s see if he will go to school. And then, Mr. Carro, if he doesn’t go to school, then you can have him report to you.”⁹⁹

Indeed, Marguerite continued to resist institutions seeking to pathologize her and her family even in relation to the Warren Commission itself, denying she had willfully ignored warnings of Lee’s problems and affirmatively attacking the disciplinary logic of those normalizing experts who treated all that was out of the ordinary as pathological and dangerous. In her interview with Stafford, for instance, Marguerite directly attacked the Warren Commission for imposing a penological truth on Lee’s life-history. “Of course after they arrested [Lee] they had to find an environmental factor,” she exclaimed, with safe logic, “and right away they said we moved around a lot. Well, all right, what if we did? We weren’t drifters. This is the twentieth century, and people move around.”¹⁰⁰

Despite such moments of lucid resistance to her negative portrayal as a mother, Marguerite never could shake the public verdict against her. Neither of her two surviving sons spoke to her again after Lee’s funeral, and her only consistent interlocutors for the remainder of her life were assassination buffs, who found in her a ready ear for virtually any conspiracy theory. As the years passed, the media came to her for quotes on anniversaries of Kennedy’s death. Yet even as events such as Watergate and the Church Committee revelations of CIA plots to kill Fidel Castro began to alter the background assumptions about knowledge and power unchallengeable in 1964, she

98. 3 *Hearings*, *supra* note 44, at 493 (statement of Evelyn Siegel).

99. 1 *Id.* at 229 (statement of Marguerite Oswald).

100. STAFFORD, *supra* note 72, at 23.

remained a ridiculed figure. She died near Fort Worth in 1981, alone and on the edge of poverty where she had spent most of her life.¹⁰¹

V. CONCLUSION: A COUNTERHISTORY OF THE KENNEDY ASSASSINATION

Most considerations of the Warren Report in the years since its publication have been preoccupied with the question of whether Lee Harvey Oswald acted alone or was involved in a conspiracy to assassinate President Kennedy. As I noted earlier, I believe scholars should engage in a different type of conversation, one that attempts to reconstruct the background of institutions, knowledges, and practices against which the Warren Commission operated and presented its vision of truth.¹⁰² One recent and intriguing work engaged in this type of analysis is Peter Dale Scott's *Deep Politics and the Death of J.F.K.*¹⁰³ Scott asks readers to reconsider what they know about November 22, 1963 from a perspective on American life that includes what he terms "deep politics." By "deep politics," Scott means all those "political practices and arrangements, deliberate or not, that are usually repressed rather than acknowledged" in the history of U.S. government.¹⁰⁴ Among such repressed practices and arrangements, according to Scott, are those that have been revealed only in fragments over the last three decades, exposing the darker sides of American power, intelligence agency crimes, Mafia penetration into politics at all levels, and routine official lying and misinformation. Scott's formulation is admirable. At the least, an interpretation of the assassination formulated without reference to the existence of these now-acknowledged features of American history is incomplete.

This Article represents a somewhat parallel effort to restore some previously neglected institutions to the background against which we interpret Kennedy's assassination. The files of the New York Youth House and the marines, and the Commission's interviews with employers and friends, are foundational elements of the truth the Commission was able to produce. In this sense, these files and the institutions and practices that produced them are "ghosts" that haunt the work of the Commission, as well as much of twentieth-century

101. See *Domestic News*, UPI, Mar. 4, 1981, available in LEXIS, Nexis Library, UPI File; *Regional News (Texas)*, UPI, Jan. 17, 1981, available in LEXIS, Nexis Library, UPI File.

102. See *supra* note 5 and accompanying text.

103. SCOTT, *supra* note 3.

104. *Id.* at 7. The term "deep politics" is somewhat inapt, because Scott emphasizes that such practices operate on the same level as more visible political power, but are unacknowledged. For Scott, the assumption of a deep and determining hand beneath government is the substance of too many misguided conspiracy theories of the Kennedy assassination. See *id.* at 16.

criminal law. Disciplinary institutions and their practices of examination, training, and confession are haunted by their own ghosts. These techniques of knowledge and power do not operate independently on subjects, but operate in and through embedded cultural norms and assumptions about race, class, and—of particular relevance to Oswald's case—gender.¹⁰⁵

By reconstructing the disciplinary background of the Warren Commission, I hope not only to have engaged in an act of historical contextualization, but also to have begun an alternative reading of the past, an alternative reading suggested in part by Marguerite Oswald. For in her criticisms of the institutions of legal authority that touched her son's life, from the New York Youth House to the Warren Commission, Marguerite pointed to a counterhistory of her son precisely contrary to that framed by the Commission—a counterhistory in which the exercise of state authority, not her own corrupting maternal influence, put Lee Harvey Oswald on the path to Dealey Plaza. Hers is a counterhistory in which disciplinary institutions themselves, not Oswald's failures within them, transformed him into a killer. Following Marguerite's lead, I begin to remap Oswald's life-history within a narrative vision sensitive to the forms of power joined to the mechanisms of truth on which the Warren Report depends.¹⁰⁶

The natural place to begin is by reconsidering Oswald's relationship to disciplinary institutions generally. In particular, as I have noted, the Warren Report presented Oswald as the quintessential failure of a disciplinary system, as a truant, a rebellious marine, and a slacker at employment. But this official reading of Oswald as an undisciplined malcontent is incomplete at best. Most importantly, while Oswald at times may have been a kind of fugitive from discipline, the trajectory of his life was also marked by a persistent pursuit of disciplinary experience and a desire to subject himself to rigorous self-monitoring and surveillance. The ambiguity of Oswald's attitude toward disciplinary institutions appeared, for instance, in his Youth House interview with social worker Evelyn Siegel. "Talk about future planning produced the fact that Lee wanted to return home and his

105. Foucault ignored the role of gender, and the role of culture generally, in the operation of disciplinary institutions, but others have pursued their connection. *See generally* JUDITH P. BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990); LOIS MCNAY, *FOUCAULT AND FEMINISM: POWER, GENDER AND THE SELF* (1992); JANA SAWICKI, *DISCIPLINING FOUCAULT: FEMINISM, POWER AND THE BODY* (1991).

106. This parallels the somewhat different effort of conspiracy theorists to develop alternative biographies of Lee Harvey Oswald. *See, e.g.*, EDWARD J. EPSTEIN, *LEGEND: THE SECRET WORLD OF LEE HARVEY OSWALD* (1978). Interestingly, materials for such a remapping were already available in the mid-1960s in the form of labeling theory. *See generally* EDWIN LEMERT, *HUMAN DEVIANCE: SOCIAL PROBLEMS AND SOCIAL CONTROL* (1967); DAVID MATZA, *DELINQUENCY AND DRIFT* (1964).

assurance that he would run away if he were placed in a boarding school," Siegel wrote of her conversation with the young Oswald.¹⁰⁷ "Being away from home means a loss of his freedom and privacy to him, and he finds it disturbing living with other boys, having to take showers with them and never being alone."¹⁰⁸ Continuing, though failing to note the irony of Oswald's ideological reversal, Siegel further reported: "If [Lee] could have his own way, he would like to be on his own and join the Service. While he feels that living that close to other people and following a routine would be distasteful he would 'steel' himself to do it."¹⁰⁹

A conscious pursuit of discipline characterized Oswald throughout his life. At fifteen, for instance, Oswald was so anxious to submit himself to rigorous, masculine authority that he joined the marines and applied for membership in the Socialist Workers Party's Young People's Socialist League. (Frustrated by the lack of response, he joined a militaristic drill club based at the New Orleans airport.) After his service in the U.S. armed forces, he defected to the Soviet Union, where his early letters and interviews suggest that he hoped to find a more disciplined, collectively organized society than the decadent and individualistic America he decried. Inspired by Marxism, Oswald dreamed of a revolutionary discipline in which rigorous controls over the self were sanctified in the name of an historic destiny. He scared away one of his few high school friends when he revealed that he was trying to find a communist cell in New Orleans, and he fantasized out loud with a marine buddy about joining Fidel Castro in the mountains.

The Warren Commission's depiction of Oswald as a kind of eternal delinquent also downplayed the evidence of the prodigious capacity for self-discipline manifested in his Spartan lifestyle and meticulous personal hygiene. According to Oswald's own notes, for example, he spent much of his time as a high school student reading *Capital*¹¹⁰ in the New Orleans public library. Later, he desperately wanted to go to college, and he was bitterly disappointed when the Soviets refused to send him to university.¹¹¹ Even Oswald's supposed failures within disciplinary institutions can be interpreted as resulting from the ambiguity those organization themselves contained vis-à-vis a vision

107. WARREN COMMISSION, WITNESSES, *supra* note 1, at 21.

108. *Id.*

109. *Id.*

110. KARL MARX, CAPITAL (Frederick Engels ed. & Samuel Moore & Edward Aveling trans., International Publishers 1967) (1954).

111. See WARREN COMMISSION, REPORT, *supra* note 2, at 679; see also *id.* at 698. Oswald was rejected by the Patrice Lumumba University in Moscow on the grounds that it was established to educate students from oppressed and impoverished lands.

of control. The Warren Commission, for example, found it meaningful that Oswald could not stomach the subordination to others required by the military. But there is as much reason to attribute Oswald's problems in the marines to the same sociability failures that plagued him as an employee, and even to view those problems as resulting from his desire for an even more stringently organized experience than the military could offer. We tend to think of the military as a social site requiring endless personal control, but it is also famous for its sanctioned discipline breakdowns.¹¹² While his fellow marines teased him for his refusal to join them in haunting drinking and prostitution sites in Japan,¹¹³ Oswald spent hours studying Russian in the base library.¹¹⁴

There may be a number of ways of understanding the danger Oswald posed to society, in fact, that are obscured precisely by the Commission's reading of its disciplinary sources. One might consider, for instance, the possibility that Oswald was one of the predictable by-products of institutions, like New York's Youth House, that strive to convert rebelliousness into the disturbing but malleable substance of crime and delinquency. As Foucault notes:

For the observation that the prison fails to eliminate crime, one should perhaps substitute the hypothesis that prison has succeeded extremely well in producing delinquency, a specific type, a politically or economically less dangerous—and, on occasion, usable—form of illegality; in producing delinquents, in an apparently marginal but in fact centrally supervised milieu; in producing the delinquent as a pathological subject.¹¹⁵

From this perspective, Oswald can be understood as an extreme case of the kind of inadvertent double agent that a disciplinary society routinely produces at a more mundane level. As Marguerite suggested to Evelyn Siegel, Oswald might have been the victim of a society of systematic normalization that identifies and reinforces deviance in its "failures."¹¹⁶ Indeed, Oswald's life-history reveals a pattern in which he initially was satisfied and engaged in each new disciplinary environment, and then quickly came to resent and rebel against the

112. Perhaps the best known recent occurrence of this sort was the "Tailhook" naval officers' convention in September 1991. The events that took place there—including strippers performing sex publicly, men walking about with their genitalia exposed, and officers groping and abusing women in the infamous "gauntlet" on the third floor of the Las Vegas Hilton—became a national scandal. See Charles C. Moskos, *Foreward* to WILLIAM H. MCMICHAEL, *THE MOTHER OF ALL HOOKS: THE STORY OF THE U.S. NAVY'S TAILHOOK SCANDAL* at xi (1997).

113. See MAILER, *supra* note 13, at 328.

114. See WARREN COMMISSION, REPORT, *supra* note 2, at 685.

115. FOUCAULT, *supra* note 4, at 277.

116. See *supra* note 98 and accompanying text.

institution with increasing violence. The disciplinary institutions toward which Oswald was attracted and under the surveillance of which he was routinely placed seem to have identified and created within him an intensifying sense of desperation and hostility. It is possible to believe that Lee Harvey Oswald, acting alone, shot and killed President Kennedy with no motivation other than one internal to his own life-history and yet still to perceive a political meaning to the assassination. The Warren Report was both correct and fundamentally incomplete in its analysis.

One might argue still further along these lines, pushing the notion that Oswald's actions (whether killing President Kennedy or allowing himself to become the "patsy" in a plot to murder the President) were determined both by dynamics internal to his personality and by the disciplinary institutions that had made his personality a subject of his own strategic manipulations. As his relentless pursuit of discipline suggests, Oswald was not simply a passive subject of institutions; instead, over time, he became an active participant in the shaping of his own dossier, demonstrating striking sophistication at manipulating the very disciplinary systems in which he was caught. At age sixteen, for instance, he wrote a letter to his school under his mother's name announcing false plans to relocate to San Diego and requesting that his files be forwarded to his address.¹¹⁷ That same year, he attempted to falsify his age to join the marines (he apparently was discovered by the recruiter).¹¹⁸ Once in the military, he sought and received permission to leave three months early on the grounds that his mother had suffered an accident and was dependent on him, mobilizing Marguerite to acquire the necessary medical certifications. Once Oswald received his discharge, he quickly left his mother and went overseas to defect to the USSR.¹¹⁹ In Moscow, he dramatically resisted the effort of Soviet authorities to eject him from the country after his initial application for residence had been denied. Oswald went to the American embassy and denounced his citizenship in what his own notes acknowledge to have been a performance planned on the assumption that the Soviets monitoring the embassy would become aware of his actions.¹²⁰ When that failed to secure him permission to stay, Oswald slit his wrists in a calculated bid to delay his deportation. Still later, he successfully obtained permission for himself and his wife to emigrate back to the United States, an extraordinary accomplishment at the time, and one conducted largely

117. See WARREN COMMISSION, REPORT, *supra* note 2, at 354.

118. See *id.* at 384.

119. See *id.* at 689.

120. See *id.* at 260-62.

through his own efforts to out-manipulate the authorities of both nations by flooding them with a stream of procedurally correct requests, claims, and appeals.¹²¹ Later still, back in the United States, Oswald took advantage of his employment at a photographic company to produce a fake draft identification.¹²² In New Orleans, he invented a one-person branch of the Fair Play for Cuba Committee, writing the national organization and, without authorization, printing his own membership cards.¹²³ When he visited the Cuban embassy in Mexico in a bid to win a visa to either Cuba or the USSR, he brought a homemade dossier of his political activities on the part of the Cuban cause.¹²⁴

Conspiracy theorists may find in these incidents reported by the Warren Commission evidence that Oswald was preparing a cover.¹²⁵ But Oswald's conduct was also compatible with the kind of amateur spy obsession that may have been an outgrowth of his fascination with the television series *I Led Three Lives*—though for that, no less significant.¹²⁶ For somewhere in the course of his life, Oswald became a person for whom the production of identity was a special and all-consuming problem. Somewhere on his path to Dealey Plaza, Oswald learned the cost of being without credible explanations of who he was and what he stood for, the kind of issues that can make spy fantasies themselves so appealing. Disciplinary institutions are a peculiar form of intelligence service. While classic spies are individuals who produce the secrets of one state in the service of another, disciplinary institutions are agencies that produce the secrets of individuals in the service of the state. We return once again to Oswald's stay in the Youth House. We know, for one, that the experience was profoundly disturbing to Oswald. When Marguerite first visited him there, he wrote poignantly, "Mother, I want to get out of here. There are children in here who have killed other people, and smoke. I want to get out."¹²⁷ More centrally, it was in New York that Oswald was first immersed in the practices of normalizing discipline, compulsory confession, and penotherapeutic interrogation. "Questioning elicited

121. See *id.* at 706.

122. See *id.* at 203.

123. See *id.* at 290-92.

124. See *id.* at 731.

125. Jim Garrison, for example, viewed Oswald's Fair Play for Cuba activities as the development of a Marxist identity useful for the conspirators in making Oswald the fall guy. See GARRISON, *supra* note 3, at 25-28.

126. Oswald's interest in *I Led Three Lives* was revealed by Marguerite in her testimony before the Commission. See 1 *Hearings*, *supra* note 44, at 200.

127. WARREN COMMISSION, REPORT, *supra* note 2, at 363. This statement is particularly haunting because Oswald's touching naiveté in linking smoking and homicide is absolutely on point—describing, no doubt, real people with whom young Oswald came into contact, but also revealing a disciplinary logic in which deviations and atrocities always are connected.

the information that he feels almost as if there is a veil between him and other people through which they cannot reach him, but he prefers this veil to remain intact," wrote Evelyn Siegel.¹²⁸ "He admitted, however, the tearing aside of the veil in talking to a social worker was not as painful as he would have anticipated."¹²⁹ She continued:

There was some very minimal movement in his relationship with his social worker, although it was so small as to be almost not noticeable. Ordinarily when he approached he remained polite but uncommunicative but when he was shown some special attention and concern when he had an earache, he responded somewhat. He never sought his caseworker out, and asked for nothing, nor did he volunteer anything further about himself.¹³⁰

We can never know what impressions these experiences had on the young Oswald, but perhaps if we look closely, we might glimpse in the boy's uncommunicative hesitancy the development of a self-reflective capacity to present his case to whatever institutions confronted him. In this respect, one can read his assassination of President Kennedy, ultimately, as a manifestation of Oswald's will to truth, of Oswald's desire to present a kind of dossier in which he offered a powerful interpretation of the meanderings of his short life to himself, to others, and to history. Such a reading does not make the assassination any less aberrational, but it reminds us that disciplinary societies generate a dangerous tension capable of disastrous results. Where democratic political authority depends on practices of knowledge and power that it cannot fully acknowledge, let alone regulate, the possibility of spectacular short circuits, of unplanned contact between the official world of sovereignty and the shadow world of disciplinary institutions, always is latent.¹³¹ Obviously, nobody in the Youth House set out to shape a murderer, let alone an assassin; but in the very insistence that juvenile delinquency contains the seeds of major atrocity, disciplinary institutions anticipate, and perhaps even establish the potentiality of, events like the Kennedy assassination.

It is with the thought of Oswald presenting himself to history that I wish to conclude. I have spent much of this Article considering the ways in which the Warren Commission based its vision of the truth of the Kennedy assassination and its perpetrator on an archipelago of

128. WARREN COMMISSION, WITNESSES, *supra* note 1, at exhibits 20.

129. *Id.*

130. *Id.* at exhibits 21.

131. On Oswald's view of himself in history, see the testimony of Kerry Thornley, a friend of Oswald in the marines: "He looked upon the eyes of future people as some kind of tribunal, and he wanted to be on the winning side so that 10,000 years from now people would look in the history books and say, 'Well, this man was ahead of his time.' . . . The eyes of the future became . . . the eyes of God." WARREN COMMISSION, REPORT, *supra* note 2, at 389.

lowly disciplinary institutions, its ghosts. These are ghosts, however, that are less and less obvious to us. At a time like the present, when fourteen-year-olds can be tried in felony court and receive life sentences,¹³² the voices of the Youth House dossier can seem almost charming, echoes of a naive but self-confident age.

More significantly, I believe it is possible to view the Warren Report as standing near an important transformation in the history of penalty. Perhaps nothing is more representative of this change than the receding importance of life-history itself in understanding the truth of crime. The knowledge/power formation built around the individualizing of delinquent subjects that the Warren Commission reflected has been largely dismantled.¹³³ And since the 1970s, the direction of reform in criminal sentencing generally has been toward uniformity and fixity and away from individualizing punishment to fit the criminal under scrutiny. Medical and psychiatric concepts have been largely eliminated from our penal codes, often in response to political assassinations. Crime is more likely today to be understood as a statistical artifact—a rate, an actuarial distribution of risk, the predictable threat posed by dangerous classes—than as the developmental twists in the lives of individual citizens. Our prisons may still bear the cellular structure in which a kind of individualization was born, but they increasingly function as part of aggregate strategies that target high-risk subpopulations. The strategies' objective is not to transform deviants but to contain and manage them.¹³⁴

One of the functions of genealogy is to give us a glimpse of alternatives to our own present. Had an even more professionalized and well-capitalized normalizing criminal justice system emerged from the 1960s, from the Kennedy-Johnson agenda, we might today see the Warren Report's study of Oswald as a decisive moment in the formation of that program. Instead, it is possible to understand the Kennedy assassination as an important element in the cultural transformations that helped undermine the disciplinary regime of truth upon which the Warren Report was constructed. The Presidential elections in 1964 were the first to make crime in the streets an issue of national importance. Kennedy's death, along with the other assassinations of that era, the urban disorders, the war in Vietnam, and the protest movement against it at home, all contributed to a sea change of public opinion regarding crime and penology. Sentiment

132. For a discussion of the increasingly punitive approach to juvenile offenders, see generally Barry C. Feld, *Criminalizing the American Juvenile Court*, in 17 *CRIME AND JUSTICE: A REVIEW OF RESEARCH* 197 (Michael Tonry ed., 1993).

133. See, e.g., *In re Gault*, 387 U.S. 1 (1967) (offering a stinging critique of the most developed part of the juvenile justice system).

134. See sources cited *supra* note 18.

began to shift away from modernist notions of individuality and rehabilitation and toward traditional punitiveness combined with postmodern strategies of actuarial justice—a shift that placed the Warren Report's psychobiographical interpretation of the Kennedy assassination in a very different context of memory.

From this perspective, the Warren Report remains a profound landmark in a transformation of the mechanisms of truth and power that are our inheritance. But if the disciplinary institutions that gave us our understanding of Lee Harvey Oswald are now part of the past, they leave their own ghosts in the present. We feel their failures—and our own failure to replace them with alternative institutions—in the large numbers of young men occupying our prisons, jails, and homeless shelters at the end of the twentieth century. Many of them are the damaged goods of institutions grown even rustier and meaner than they were in the 1950s. Many of them, like Oswald, are from homes headed by single mothers in a society in which that status remains as demonized as ever.¹³⁵ Many of them, like Oswald, discern the potential for social status in masculine discipline, though they seek it in socially disapproved institutions, such as street gangs and revolutionary cells. Unlike the Warren Commission, however, we don't want to know their names, the sordid facts of their childhoods, or the chronicle of their despairs. Yet in the fear they are capable of generating in others, in the unremarkable but undismissible possibility that they might explode into a sudden violence, these angry young men leave us close to the unresolvable mysteries of Dealey Plaza. In this sense, while the assassination of John F. Kennedy recedes into an even more distant past, the fear of unpredictable and unpreventable tragedy weighs more heavily upon our lives and consciousness. We remain, that is, in so many different and conflicting ways, very much in the thrall of the violence of November 22, 1963.

135. See sources cited *supra* note 63.

