

Daniel Jeremy Silver Collection Digitization Project

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MS-4850: Daniel Jeremy Silver Papers, 1972-1993.

Series III: The Temple Tifereth-Israel, 1946-1993, undated. Sub-series B: Sermons, 1950-1989, undated.

Reel	Box	Folder
52	16	969

Manson, Davies, and Calley: The Credibility of Our Courts, 1971.

Western Reserve Historical Society 10825 East Boulevard, Cleveland, Ohio 44106 (216) 721-5722 wrhs.org American Jewish Archives 3101 Clifton Avenue, Cincinnati, Ohio 45220 (513) 487-3000 AmericanJewishArchives.org Manson, Davis and Calley The Credibility of our Courts Daniel Jeremy Silver April 11, 1971

Lt. William Calley has been declared guilty of premeditated multiple murder and that he did in March of 1968. A roundup or have roundup a large number of the women and children of the village of Myly 4, and he did herd them along a road towards a ditch by the side of the road, shoot them down in cold blood.

Charles Manson has been found guilty of pre-meditated multiple murder in that he did mastermind the killing for kicks, a night of violence, in which members of his family murdered four people and used their blood to scrawl indecencies on the wall an aghast world.

Angela Davis has been indicted and arraigned on the charge of being an accessory and an accomplice to multiple murder, kidnapping, in that she did provide the guns that were used in an escape attempt in San Raphael, California, an attempt to free a number of convicts from Solidat Prison who were standing trial for the killing of a guard while they were in prison.

Now I do not raise these cases this morning in order to cast any doubt upon the verdict in the first two cases or upon the legal procedures in the third. It seems to me that the Calley and the Manson trials were remarkably calm. There was a great deal of concern for due process and I know of absolutely no reason to doubt the equity of the verdict. And I have not heard of any hard evidence which would lead me to assume that the State of California cannot make a substantial case when it brings

Angela Davis to trial. Rather I raise these cases this morning because of our re-

action to them, because of the public furor which has emerged over them. I don't

think I will ever forget the phone call I received just last weekend from a determined

and many plous west side church woman in Cleveland who told me that her church

was going to dedicate its collection of money that it had raised or was going to raise

that weekend for services of God, the Defend Calley Fund, and she confidently expected that the Temple would want to do as much. Nor will I soon forget the newspaper picture of a youngish mother, standing at an American Legion meeting, singing the Star Spangled Banner, holding in her hand a three or four year old boy. There was a largish purse hung over her shoulder on which there was a Free Calley sticker. And I kept remembering that one of the charges on which Calley had been found guilty was assault with intent to murder on one male child. All of us read in the newspaper yesterday or the day before the lyrics of the new version of the Battle Hymn of the Republic which somehow transformed Lt. Calley into something of a folk hero and I am told that in California they have taken the last semi-literate words which Charles Manson hurled at his judge and turned these into a folk song. "He don't have no authority over me, you're not nearly as good as me. " His grammar is as bad as his character. I suppose I ought not to have been a little bit aghast by our reaction. My black friends said to me, "What could you expect? Lt. Calley only killed Oriental women and children and yellow skins don't count. Haven't the American people been counting yellow pelts and yellow scalps in Vietnam for almost a decade now? " And my psychiatrically sensitive friends said to me, "What did you expect? Lt. Calley had become something of a symbol of the little man caught in Mr. Big's war, a little man who responded to the bugle, who sent his son to enlist, to march out to another quick American victory. Weren't we the most powerful, the most technically efficient nation in the world?

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Hadn't we a remarkable string of international military successes? He marched out to bluding, to the mud of Vietnam, seven years of death, frustration and now to defeat. The little

man is trying to protect his own, draw his own back to him against the Mr. Big's,

the Establishment, the powerful, the all-knowing, those whogent America off to Asia in military adventure. And my own historical sense ought to have warned me that we were in for some such reaction. Americans have a remarkable record of being romantic about crime and the criminal. Every six year old is given a big bandana to put over the lower half of his face and a six-shooter, an exact replica of the guns of the bad men of the west, and he's told, this is status, this is manhood and manliness and our literature is full of novels, of scripts, of movies, of television on the bad mangood man theme, always with a gun in his hand, and how many convicts in prison, despite all the pathology, the violence implicit in their being there, have become the subject of national concern, compassion and even of crusade. I give you the Bird Man of Alcatraz. I give you Caroll Chessin. This is not a new trait in the American char-Some fifty years ago the humorist, Peter Finley Dunn, a man who wrote in acter. the year of Will Rogers when Americans could still poke rather stirred humor at themselves for their pomposities and moral blindness, said this in comparison of the American and the English character: The English believe a man to be innocent until he is proven guilty and then they assume that he's guilty. We Americans assume a man to be guilty until he's proven to be guilty and then we assume him to be innocent. " I think there's a great deal of truth in this. Perhaps the reason lies in the fact that most of our first families, most of the early settlers, and some more recent, come to us directly from the jails of Europe. For generations America was the happy dumping ground for the overcrowded jails of London and Birmingham and Amsterdam, Frankfort and Dresden and Hamburg. This country was populated

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originally by not only the ne'er-do-wells, but by the no-goodniks and most

families have some place in their history one of these no-goodniks, these ex-

criminals who came and found abundance and opportunity and did well, shrewdly,

but did well, so obviously every criminal is Robinhood. Every criminal can have

an immediate renewal of personality, be rehabilitated. Americans, until recently, have not had to live behind the confining walls of a city where if a man was criminally pathological, if he was unbalanced, you were in daily danger of his aggression. We could always turn the criminal loose in the wide open spaces. Don't turn me loose, don't fence me in, just turn me loose, let me wander and I'll find myself. Let me wander and I at least won't do you any harm." And many wandered, and some found themselves and some, fortunately, got lost and Americans grew up with this feeling that the criminal wasn't really so bad; he wasn't dangerous; he didn't threaten me; I drove him out of town; I didn't have to worry about him any longer; let's forgive and forget. Now, it's good to forgive and forget and to give a man another chance. It's important to forgive and forget, but sometimes you can forgive and forget too much. And Americans have been incredibly romantic, stupid, in our whole approach to crime, to criminality. We have been unwilling to accept the existence of the criminal sub-culture. We have been largely unwilling to accept the existence of a criminal type personality which means terribly complicated forms of therapy for any kind of rehabilitation. We assumed what? That if we were put into prison for a few months it would shock us and we'd work very hard to stay out of prison. But some men and some women come from the criminal sub-culture. They are attuned to this kind of life. It doesn't shock them at all and so we have created a penal system in the United States which is a national disgrace because we didn't invest any money in

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education, in the re-education of the criminal, in the rehabilitation of the criminal,

after all, that would come out of our pockets. We put him there, behind bars, for a

few months and we assumed that he would be shocked into a change of his ways of life.

And so our prisons have become schools for crime. It's all that happened to the

prisoner in jails. He learnt that he met other prisoners. He learned that he could pool their resources; some were fine pick-pocketers, some were fine kidnappers, some were fine thieves, altogether they could create a multi-faceted organization, a conglomerate, which would be quite effective on the outside.

I give you Charles Manson. Charles Manson has spent nearly half of his adolescent and adult life in confinement. He has been accused and convicted of petty theft, grand theft, and auto theft, and repeated theft; of the forgery of government documents, government checks; of assault and of aggravated assault; and his personality has taken a pattern where it is aggressive and it tends toward the violent and it dwells on what we call the ghastly and the garrish and the ghoulish. But Americans would be aghast if one suggested to them as I would that a man who is an habitual criminal ought to be kept under some kind of constant surveillance; that not only did we fail to provide to the Mansons of our world rehabilitation, psychiatric help, all that is possible to give men when they are in prison to reform them, but we refused to take the ordinary precautions which protect us from the very very small, but very very dangerous minority in the population who think nothing of taking out their aggression others. Americans are romantic. We tend to assume that all we have to do is to incarcerate a man and we change a man and we usually do, for the worse. And this kind of emotionalism or romantic innocence about the criminal has one other untoward effect. We tend when a man is brought to trial always to bring the

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whole society to trial. We tend to introduce poverty or abundance, deprivation of

love or too much love, race or superiority, to find any one of a series of environ-

mental factors which we assume or some assume made the man what he was.

I remember reading during the Manson trial an article which was published in the New York Times Sunday magazine by a man named Steven Spender. It was typical of this kind of reasoning. It said that Manson was the most understandable of all of the members of his family. He dealt with him as if he were simply a naughty child in school and said, after all, he is a monument to parental neglect and the failure of the public correctional system as if this fact, in and of itself, excused the acts that he had been involved in. It went on to rehearse Manson's sordid and sad biography. He was born to a teen-age prostitute. He was raised in foster loveless homes. He was erratically educated in a series of inadequate schools, but so was President Lincoln. One could give the exact same biography to the President of the United States. Man is not an animal. An animal is a creature of instinct. He has only his instincts with which to reply to the pressures of his environment and when the environment is inadequate for him he either dies or he becomes violent. But man is a human animal. He has a mind. He can think. He has a will. He can organize and make effective what he has perceived and man is not simply a prisoner of his environment. He can, in fact, transcend that environment. There are tens of thousands of people in the United States whose biographies are as sordid as that of Charles Manson and, thank God, they didn't turn into Charles Manson. But how we romantic Americans delight to play the environmentalist game. Not so much with the Charles Mansons of the world because they deal in naked violence and all of us

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are scared stiff by this kind of unexpected violence.

With the Angela Davis's and the William Calleys it's another story. Here

we have an innate sympathy with the environment which created or helped to create the world which helped to make them what they were and here we are far more likely

to use the environment in order to excuse them. What was it that George Latimer,

the Defense Attorney, at a summing-up speech said about Lt. Calley? "This boy is a product of the system. He was taken out of his own home, given automatic weapons, taught to kill, they ordered him to kill." When the entertainer, Sammy Davis, the other week was asked why he was wearing a Free Angela Davis button, he said: "I don't agree with her political views, but I share her blackness." And there are any number of Americans who accept this kind of emotionalism, of environmentalism, as a good reason to excuse the act, to free them of any sense of guilt. Let's examine it, if you will, with me a little more closely.

boy is a product of the system. He was taken out of his own home, given automatic weapons, taught to kill, they ordered him to kill. All of it is true. The war in Vietnam is not a national scandal, it's an abomination, a national sin. We fought this war, ...unlike any other war in our history. We fought this war against a people we said we went out to save. Every day of the war since 1965,68 South Vietnamese men, women and children, non-combatants, had been killed. We counted scalps. We had three fire zones, not in North Vietnam against the enemy, but in South Vietnam, against the villagers. One third of the Vietnamese whom we went out to save from a fate worse than death are today either dead or refugees. This war was fought indiscriminately with indiscriminate bombing, with napalm, with a peasant, the illiterate, poor, desperate peasant of South Vietnam the victim. There is nothing one can say, really, any longer in defense of this war, but,-did we force

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Lt. Calley to round up men, women, children who were non-combatants, and coldbloodedly massacre them? There have been perhaps a hundred thousand second lieutenants sent over to South Vietnam and I am sure that some of them killed noncombatants. I am sure that when some of them were on patrol in the night in the jungle in the villages and they saw something move, they heard a noise, they shot. But in all[®] his plethora of revelations which has come out in the newspapers these last days I have yet to hear of a single comparable case in which an American patrol went into a village, secured the village, rounded up the women and children, and then shot them down. There was no danger, no automatic reflex, there was coldblooded killing. No one can say that we knew instinctively, that we understand, how Calley could feel that there was nothing very different in what he did and yet there was. He went beyond the bonds of the ordinary, the bonds of acceptable behavior in an incredibly difficult situation. No activity which kills is really acceptable. This is unique. This goes beyond the bonds of disorientation, of the animalization, of the militarization, that was imposed upon our men.

What about Angela Davis? Is her blackness sufficient explanation for the act that she we alleged to perform? America has as ugly a record when it comes to race as it has in Vietnam. But only de and six generations since the Civil War in which we degraded their black personality, in which he denied him the freedom which he thought he had won, in which we created a system of apartheid, in which we called him, "Hey, boy," in which we elbowed him off of the sidewalk, in which he was necessary for our service, but not known as a human being, in which he was denied equality and education and vocation in government, in representation, every indignity which human beings can impose other human beings was imposed on our black community. And more. The black community learned

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that the law, the sheriff, the court, was an arm of white power. How did a black in the white South with its all-white judiciary and its all-white juries and its all-white sheriff office get justice? Legal system, the court system, was punitive; it was part of the repressive infrastructure of his society. One can understand what Sammy Davis Jr. meant, but, in part that society is behind us. And an Angela Davis herself is a symbol of the fact that it is behind us. She is not the daughter of sharecroppers. She is a daughter of people who live in the middle class. She was not denied an adequate schooling. She was given the best private schooling anyone in the United States can receive. She was not denied vocational opportunity. She was appointed as an instructress in one of the finest universities in the United States. Her perspective was not narrow. She had traveled around the world. Angela Davis reacted not from the blackness which we respond to and the guilt which we understand. She responded as a free woman who had determined that violence was the only way to achieve certain political ends which she had in mind and she freely and willingly chose the philosophy, the ideology of violence, to create her revolution. Arguments which we instinctively make have to be far more carefully examined.

Yes, it is true, the court system in the United States has been unjust,' unjust to the poor,' unjust to the black,' unjust to the Mexican-American,' unjust to the American Indian,' unjust to all those who lived on the other side of the tracks. Let a young man from the suburbs take his father's car without his father's knowing it and drive recklessly and commit traffic manslaughter and he will be spoken to severely and he will be put on parole and in a few years the whole incident will be expunged from his record. Let a street child steal a car and drive recklessly and commit traffic manslaughter and he will be sentenced to confinement for an indeterminate term and he probably will never be able to escape both the environment in which he

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now finds himself and the record which he has now made for himself. Our courts have a long sad history which shows that they have been arms of the privileged; which shows that they have not given equal justice before the law, but a privileged justice to the privileged, and equal justice to the poor only when one measures it against all others who are poor and outcast. But, again, times are changing. Again, in the last years we have had the development of the public defenders office, of legal aid societies; we've had landmark cases, the Gideon case, the Escovito case, cases in which the Supreme Court determined that we must provide competent legal assistance from the very moment in which a man is apprehended by the police, despite his poverty and inability to pay for a lawyer. One by one the administrative procedures by which sheriff's offices and police offices managed to build a record confessions against the poor, against those who didn't know any better, have been thrown out as evidence to The last ten or fifteen or twenty years the American legal system has made a desperate valiant effort to wrench itself from its previous position as a tool of the privileged classes to become an area, an arena, apart from social pressure by which rich and poor were, in fact, judged equal. Nothing is perfect, but great strides, certainly, have been made. And if there is any sadness which overrides all others in the handling of the public reaction to all of these trials it lies in the action of the President of the United States, for at a moment in time when the courts have for twenty years fought to free themselves from their shadowed past, fought to create a system where the poor and the black could expect equal justice, where he stood up and said, "I will review the case of Lt. Calley before it is gone through the long processes of the law. And he almost promised openly that that review would include if not a pardon, certainly the cutting down of that sentence to

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nothing more than a slap on the wrists, and he did it in such a way where it was

evident that he acted only out of the crassest political motives. Governor Wallace

of Alabama was one-up-man-ing him with the Southern vote and he wasn't about to

lose it. And if we've had any classic example of the politicization of our court

process it was given to the nation by this single act, by a President who was more concerned with 1972 than he was with the majesty of the law so necessary to the operation of our society.

I don't know what the final record of President Nixon's years in office will be, but when it comes to be written this act, taken two days after Lt. Calley's sentence, this act to free him from the stockade after one day and one night in the stockade, surely the shortest sentence on record for a man guilty of pre-meditated multiple murder, will go down in history as one of his most inglorious moments where he undid here something essential, the integrity of the judicial system of the United States.

Yes, it is true that the courts have given unequal justice, but it is equally true that they have striven in latter years to be just and, more importantly, it is true that they must strive further in this direction if we are to have and retain a society any respect for law and for justice. But what concerns me above all else in this furor is that the American people seem to have poured against the courts all of their pent-up frustrations and bitterness against the confusions of our day. I think it's time that all of us reminded ourselves of what courts are and what they are not.

Courts are not the place in which a society creates the laws by which it is organized. That's the responsibility of government, of the legislative branch of

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government. If a society is unjustly organized this is not the responsibility or the

guilt of the court, it is the guilt of the society at large. If you are unhappy with the

economic policies of the nation, the lack of opportunity for the underprivileged of

the nation, with welfare in our nation, even with the judicial structure of our nation as a structure, the remedy lies with you and your vote and your representative. The justices cannot do it for you. There's a very telling bit of dialogue in the biography of Justice Leonard Hahn, a justice of the Supreme Court of the State of New York and one of the pre-eminent legal scholars of our generation, a great friend of Justice Holmes. One day Justice Hand drove Justice Holmes down to the Supreme Court of the United States and was about to sit in session and as he let the justice out of the door of his car he said: Goodbye, sir, do justice today. And Justice Holmes turned to Leonard Hand and he said to him: That's not my job. My job is to play the game according to the rules." Think of that. The court cannot allow the whole issue of the structure of the society to intrude on the case that it's before. It must judge according to the law. Arbitrary law does have a power to strike down, but a power severely limited. It plays a game, a game designed to protect you and to protect me from those who will wilfully take advantage, threat to our life, to our limb and to our property. But if you are unhappy with the environment which creates injustice the remedy is not with the court. The court protects individual rights under the law. The remedy for unjust laws lies with the legislators and it is there that the pressure must be applied and it is there that the changes must come about.

I'm thinking much this season of the biography of Moses. We know Moses

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as the Law Giver. We remember the law. We have hardly any record in our Bible

of the daily activity of Moses as a judge. Every day he sat before the tent of meeting

and the people brought their complaints, their problems, their tensions, their arguments

to him and he adjudicated the way any oriental shiek does. There's hardly a record in the Bible of his forty years of Mosaic activity. Why? Because essentially he was playing a game, a necessary game, for the people in the norm of their day. The law is lasting. The game is limited to the society which Moses was a part. Our game is limited to the society of which we are a part. I'm afraid that many of us are guilty of laying the court the guilt for all the ills of our society. How many people have you heard saying: "It's the courts' fault that there's so much crime in the nation. They're too easy with them." A court only applies the law. The court is eager to write a for the rich record of equal justice/and for the poor. "They're so easy with the criminals because they've been too easy with the likes for us for so long. That's equal justice.

Manson disturbs us. Calley disturbs us. And Angela Davis disturbs us. If we're disgusted with Vietnam let's get out of Vietnam. Let's force the President to do so. If we're disgusted with racism let's do away with it; first, in our businesses, then in our communities, and see to it that effective laws are enacted and enforced and let's tell our legislators exactly what we feel. The court must judge the man. A court case is always a tragedy because the judge, system, cannot allow the environment to be brought in except perhaps in mitigation of the sentence. A man is wrenched out cf his environment and he's judged against the law. That's why justice is blind. She must be. Nor is this an unworthy game that justice plays. It's a game designed to protect the fabric of the society. We cannot have people roundirg

up other people and shooting them down. It simply cannot be tolerated. However

impoverished or undernourished or love-starved their backgrounds may be it cannot

be tolerated. The victim has a right as well as the man with the gun.

Justice Brandeis said once: 'If you want respect for the law you must have respect for laws. If we want to have respect for the legal system then I could give you a long list of changes and reforms which ought to take place in our national society, in the reordering of our priorities, in the structure of our government, in the protection of the weak and the powerless and the consumer, the child. That's where the public furor ought to be aimed. Yes, Lt. Calley is a tragic figure. Yes, Charles Manson is a pathological personality. Yes, Angela Davis does represent black militancy. But - they are also people and there are laws and two of them have been judged guilty of violating these laws. A third is to stand trial and we cannot, simply for the sake of the society at large, forget the law, forget their act, and excuse it.

You and I, dear friends, are children of tradition which believes in law, which is founded on law, whose religious leaders have always been the judges in law courts and their communit. If I were to research the tradition for you I could lay before you example after example of cases in which judges made a decision, though they knew that the person before them was tragic, a creature of his time. Yet, they had to enforce that which was necessary for the good of the common weal. The issue is not Calley. The issue is the nature of this nation. The issue is not Angela Davis. The issue is the nature of this nation. We willing not to fight so much for the person as for the principleand are we willing to recognize that courts cannot do it for us. We must become political and active and do it for ourselves.

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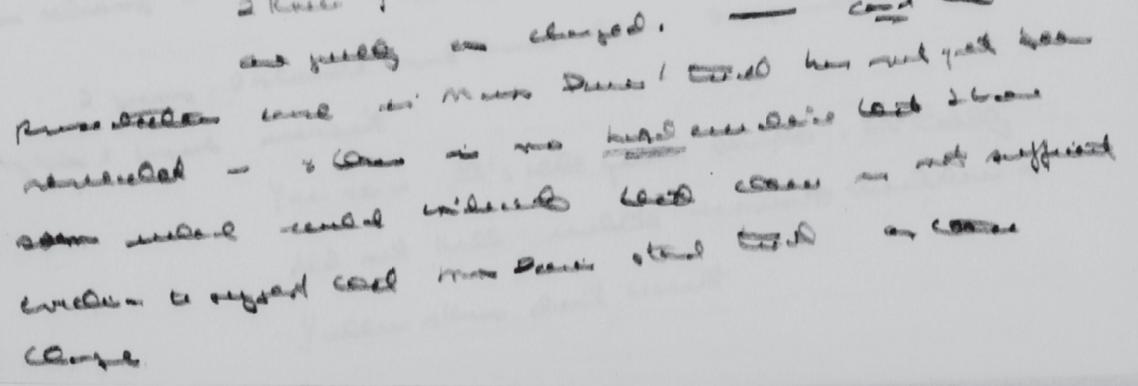
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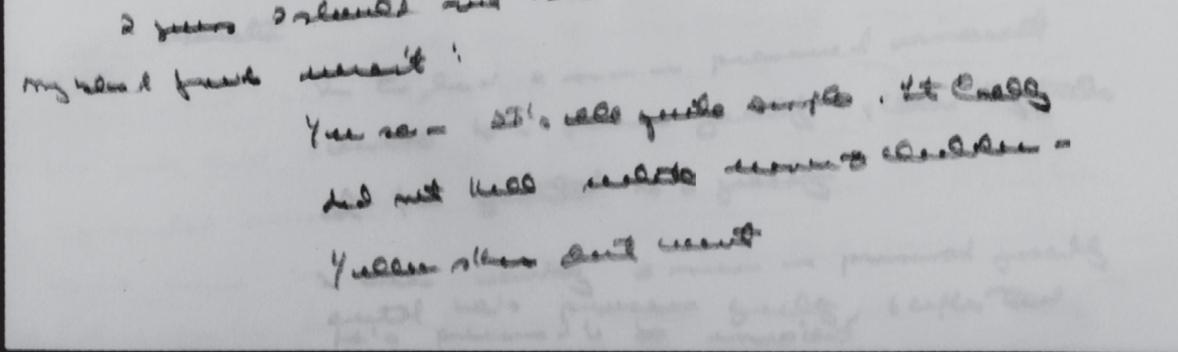
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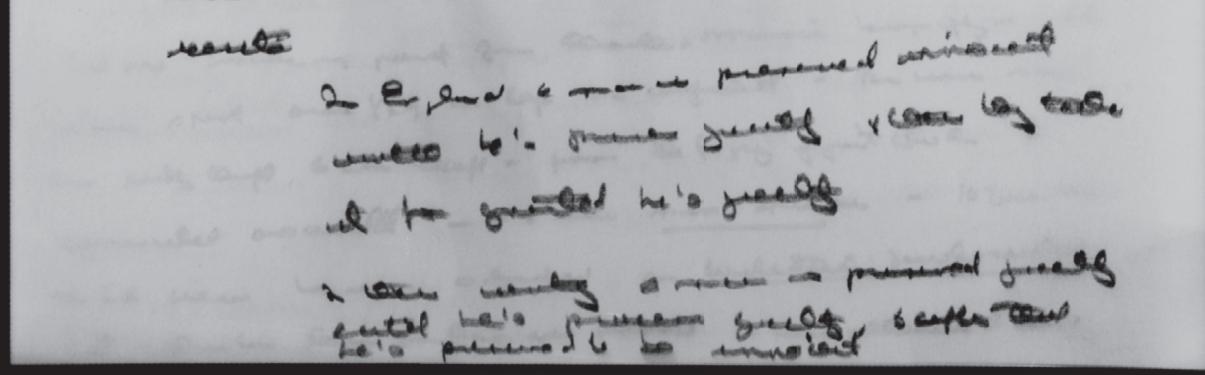


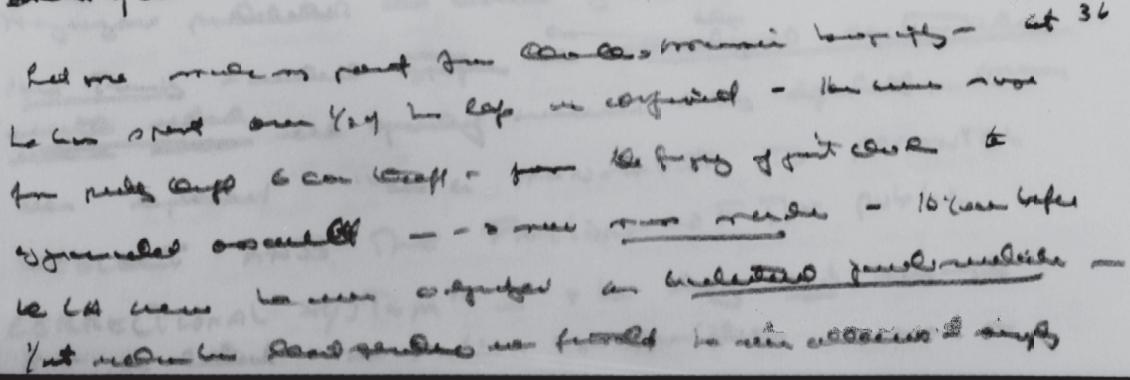
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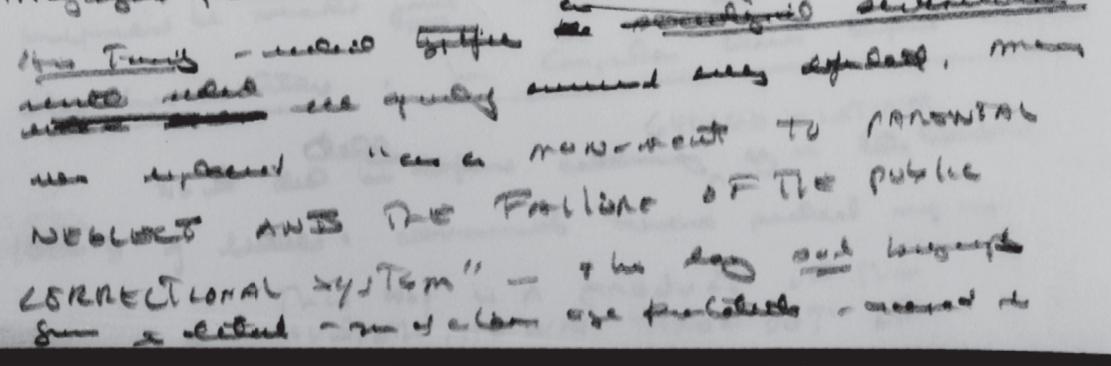
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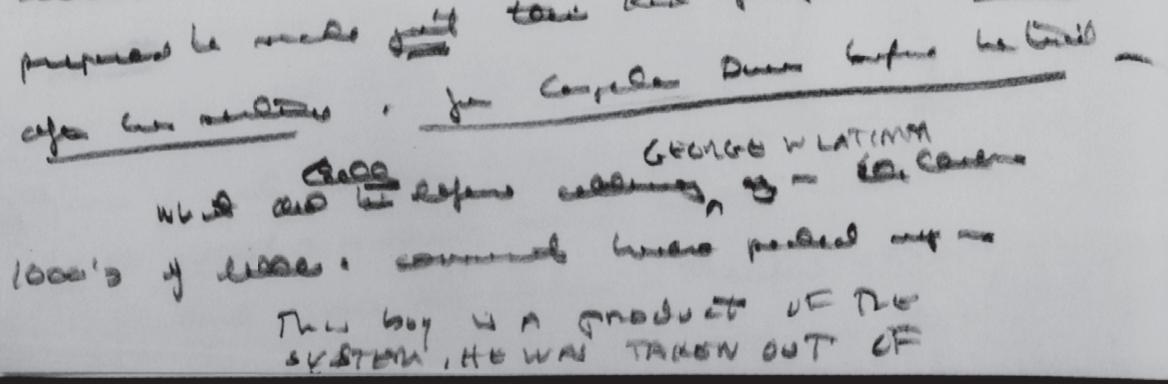




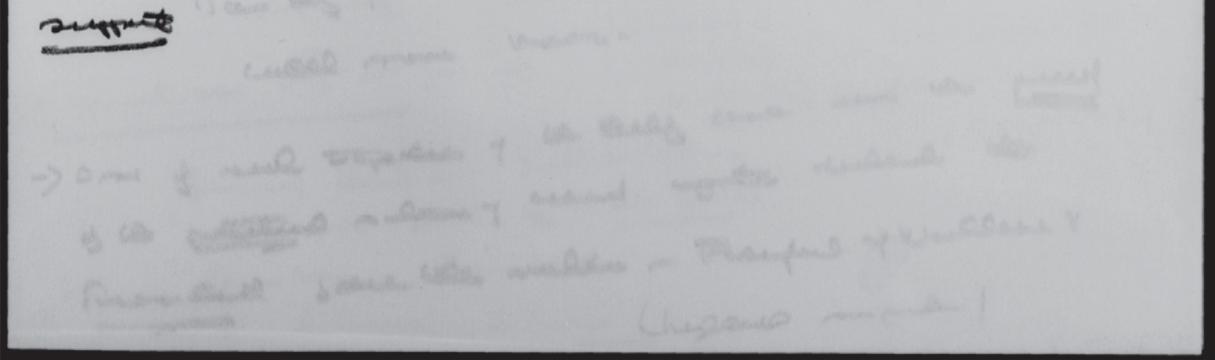
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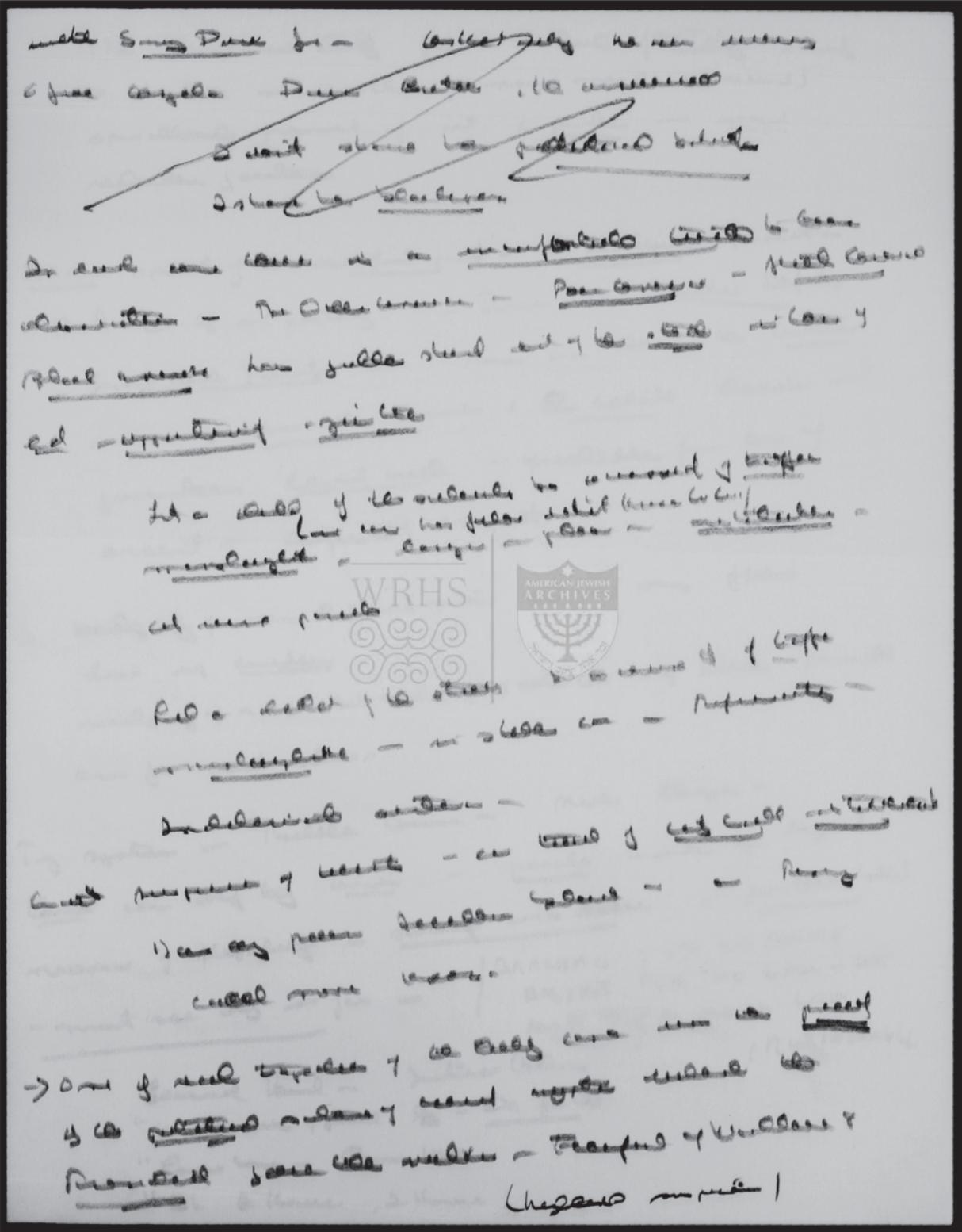


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