

## **Kol Nidrei: Night of Profound Conscience**

### **“The Infectious Presence of Racism in the Death Penalty”**

For Yom Kippur Eve

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If someone hasn't seen you for a while, it's likely they may say, "Gee, you haven't changed a bit!" If this remark refers to our continued youthfulness and good looks, it is very welcome. But if it refers to who we are on the inside, then it would not be so welcome. For it means we haven't been growing and changing and improving ourselves as we should.

Change is what these High Holy Days are really all about. I don't mean shallow or superficial change. I mean real change -- serious change, change in depth, the kind of change that forces us to conquer our demons and to transcend our baggage. There is no meaningful change without giving up something. Yom Kippur summons us to give up our bad habits, to give up our grudges, to give up blaming others for our own mistakes, to give up our erroneous beliefs about ourselves and others and to embrace something new instead.

If you will do this, then after these High Holy Days, come tomorrow night at sundown, your new and improved self will be so palpable that your friends will see it on your face. They will come up to you and say, "My, my how you've changed." And deep inside you would know it's true. That you had become more loving and more caring, more calm and more centered, more generous and more wise.

Let us pray to God on this Kol Nidrei night that God encourage us to change. By "encourage," I don't mean just support, but the true meaning of the word "en-courage": to give courage. May God give us the courage to step outside our comfort zones, the nerve to face down the unknown, and the resolve to make this New Year 5761 a memorable one. A year of great personal growth and unprecedented transformation.

There have been no end to the Jewish jokes should Senator Joe Lieberman become elected:

If Lieberman is elected vice president, there will be no pork barrel politics. If Lieberman becomes vice president, he will work for America 24/6. If Lieberman becomes vice

president, Saturday night state dinners will become Sunday night Chinese. If Lieberman is elected vice president, Camp David will be moved to Miami Beach.

And this is my favorite: if Lieberman becomes vice president, every time "Hail to the Chief" is played, the secret service will lift President Gore in a chair and dance around.

On a more serious note, some political commentators have found proof in Lieberman's nomination that the Jews have finally "made it" in America. The Reverend Jesse Jackson and many others have expressed the belief that Lieberman's candidacy will soon bring down the barriers for Blacks, Hispanics, and Asians.

I don't believe it's appropriate for the Jewish community to pat itself on the back just yet. We may have "arrived" in America. But other minority groups have surely not. Our optimism about the future must be tempered by the seriousness of the present situation for America's minorities.

On this Kol Nidrei night, night of profound conscience, a matter of conscience weighs heavily upon my mind. It is the ongoing reality of racism in America and the disproportionate manner that the death penalty is meted out in this country to racial minorities, to the poor, and to the mentally retarded.

"Race" says Richard Dieter, executive director of the Death Penalty Information Center in Washington, "is more likely to affect death sentencing than smoking affects the likelihood of dying from heart disease."

Imagine this scenario: you are now on your way home from dinner and a movie. It has been a delightful evening. Suddenly you see the red lights of a police car in your rear view mirror. Like a good citizen, you pull over and stop. But without any explanation, you are ordered to step out of your car. A police officer pats you down, while another aims a gun at your face. A third police officer tears your car apart looking for drugs or stolen merchandise. You are handcuffed and harshly pushed into the back seat of the police cruiser. Fifteen minutes later, without any apology whatsoever, you are released.

This was the true experience of a Detroit African-American man thought by the police to be the gunman who robbed a nearby convenience store. But a computer check revealed that this black man was Dennis W. Archer, Jr., a well-known attorney, and the son of the Mayor of Detroit. When informed of the incident, Mayor Archer was not surprised. For even he had once been pulled over by his own police force!

It may be that none of us in this sanctuary tonight have experienced police harassment. Most of us probably never will. White people are rarely treated in such a manner. But for Blacks, Hispanics, Asians, and other minorities, police intimidation is a part of daily life.

Through investigative reporting we have become informed of the discriminatory practice of racial profiling by the NJ state police and numerous other police departments around the country. We are now well aware that the police brutality we learn about from the media is only the tip of the iceberg of what goes on.

It is so common for blacks to be stopped when they drive into primarily white suburbs that they have given their imaginary crime a name, "DWB," Driving While Black.

Our beloved country is still far from being a fair place for all its citizens. Negative racial stereotypes remain common among whites. Surveys demonstrate that well over fifty percent of whites continue to believe that Blacks and Latinos are less intelligent than whites, are prone to violence, and prefer to live off welfare.

Minorities continue to be covertly discriminated against in employment, housing, bank loans, insurance and healthcare. Mayor Archer observes, "You cannot come across anyone who is African-American who has not at some point felt that they have been either subtly or very directly discriminated against because of their race."

Discrimination extends even to our country's national weapons laboratories where Asian-Americans have been denied advancement and targeted for special scrutiny as possible spies for foreign governments.

The justice department's prosecution of Dr. Wen Ho Lee, his imprisonment without bail, and his solitary confinement for nine months under "demeaning, unnecessarily punitive conditions" is the most recent and blatant example of racial profiling against Chinese - Americans.

But the gravest threat, the gravest threat to civil rights in America today is the depth to which our criminal justice system is wracked by racial inequalities and disparities. The Leadership Conference on Civil Rights asserts, "Our criminal laws, while facially neutral, are enforced in a manner that is massively and pervasively biased."

Recent research conducted by the conference, the National Council on Crime and Delinquency, and the Youth Law Center reveal that at every level of the criminal justice system, race makes a decisive and disproportionate difference. The disparities in treatment are staggering:

African Americans are more frequently arrested and convicted than whites. African Americans are sentenced to prison far in excess of whites and for longer terms. African American youth are arrested, held in jail, tried as adults, sent to juvenile prison, sentenced to longer terms, and locked up with adults more frequently than white youths. African Americans are substantially more likely to be sentenced to death than whites for the same crimes – especially if the victims were white. African-Americans are executed more frequently than whites for the same crimes.

In a landmark study published this past spring, Columbia University law professor James S. Liebman found that our capital punishment system is "fraught with error." In the twenty three year period between 1973-1995, he discovered that 68% of all death sentences imposed were subsequently overturned by higher courts due to serious error. Were it not for the process of judicial inspection, in nearly seven out of ten capital cases, people were going to be unjustly forced to spend their lives in prison waiting to die.

The seriousness of these errors in our criminal justice system is further underscored by the results of retrial. 82% of the capital judgments were replaced with a sentence less than death or no sentence at all. 7% of the cases on retrial found that the defendant was innocent of the capital crime altogether!

Since 1973, more than 80 people on death row have been subsequently found innocent and released. But these corrections require extraordinary time, talent, and money. Are innocent people then being put to death in this country? The late Supreme Court Justices Harry Blackmun and Thurgood Marshall were convinced of it. The Washington-based Justice Project asserts that at least one out of every seven executions in this country involves an innocent person.

The number of exonerations won in the nick of time by new DNA technology, investigative journalism, and expert attorneys has brought home as never before just how mistake-prone is our system of criminal justice.

An overwhelming body of evidence now exists that our system of capital punishment is Broken. It is grossly arbitrary. It is infected with racial bias. It is unjust.

African-Americans now comprise 43% of those on death row in the state system and 67% of those in the federal system. It is not justice that has placed all of them there. Some have been sentenced to die because of incompetent legal representation, suppression of evidence by the prosecutor, or improper prosecutorial selection of the death penalty. Some have been sentenced to die because of the judge's and/or jury's racial bigotry or the defendants' poverty. "It is rare that a wealthy white man gets executed," says E. Michael McCann, the Milwaukee district attorney, "If it happens at all."

These miscarriages of justice warrant significant public concern. The statistical probabilities are rapidly escalating that our society will execute more and more innocent persons in the years ahead. That should deeply trouble us all.

Reverend Joseph Lowery observes, "By reserving the penalty of death for black defendants, or for the poor, or [just] for those convicted of killing white persons, we [perpetuate] the ugly legacy of slavery –teaching our children that some lives are inherently less precious than others."

The Torah teaches that the punishment for premeditated murder is death. But biblical law is never the final word in Judaism. One must consult the Talmud and the medieval codes in order to know what Judaism teaches about anything.

Capital punishment was practiced in Israel for some time. But our Rabbis were divided on the subject. Some, like Rabbi Simon ben Gamaliel insisted that the death penalty was a morally legitimate deterrent to murder. But Rabbi Akiva and Rabbi Tarfon insisted that the death penalty was not a moral option. The Mishnah reports "A Jewish court that passes the death penalty even once in seven years is called a violent court. But Rabbi Elazar ben Azariah said that a violent court is one that passes the death penalty even once in 70 years."

Faced with a clear-cut biblical mandate, our sages agreed that capital punishment is permissible in Jewish law, but they severely restricted its application. Insisting that capital punishment can be imposed only if a person has been forewarned of the death penalty and the act of murder has been seen by two eyewitnesses, our sages rendered the death penalty effectively inoperative.

The majority of our Rabbis believed that mistakes in death penalty cases were inevitable. They concluded that it is far better to err on the side of letting a guilty person escape the death penalty, than committing the "ultimate nightmare": putting to death an innocent human being.

Jewish ethics teaches us that every citizen facing a capital charge should have the right to a competent and experienced attorney and to the DNA testing of evidence. It teaches us that judges ought to be required to inform juries of all sentencing options. It teaches us that the current capital justice system requires significant reform.

And until such time that sufficient remedies are put in place to safeguard the rights of minorities and the poor — capital punishment is not a moral option. At this point in time, justice demands a national moratorium on the death penalty in America.

Such a moratorium on executions is precisely what a growing body of senators, governors, social scientists, newspapers, legal and civil rights groups, including the NAACP and the American Bar Association, have been calling for.

Right now, twelve states do not have the death penalty and of the thirty six that do, twelve are seriously considering a moratorium. Governor George Ryan of Illinois, a pro-death penalty republican, was the first governor to impose such a statewide moratorium last February.

Citing the fact that no less than 13 men on Illinois' death row were ultimately exonerated of the crimes for which they were sentenced, Governor Ryan stated, "Until I can be sure that everyone sentenced to death in Illinois is truly guilty, until I can be sure with moral certainty that no innocent man or woman is facing a lethal injection, no one will meet that fate. I cannot support a system which, in its administration, has proven so fraught with error and has come so close to the ultimate nightmare, the state's taking of innocent life."

Before you cast your vote in the upcoming presidential election, I urge you to take into consideration the position of the candidates on capital punishment and their openness to a national moratorium on the death penalty.

Fifty years ago, Jews were at the vanguard of the struggle for civil rights in America. In the '50's and 60's, many Jews took leadership roles in the civil rights movement.

Jewish lawyers waged court battles to strike down discriminatory laws. The civil rights act of 1964 and the voting rights act of 1965 were actually drafted at the Religious Action Center of Reform Judaism in Washington. Jews were among Rev. Martin Luther King's closest advisors and contributed greatly to the financial resources at his disposal.

Rabbi Abraham Joshua Heschel and other social-action minded rabbis were on the front lines of protest marches and lunch counter sit-ins. Idealistic Jewish students – including one Yale undergraduate named Joe Lieberman – made up two-thirds of the white volunteers who crossed Mississippi during "Freedom Summer" of 1964.

Fifty years later, "the injustices of the criminal justice system threaten to render irrelevant [all these years] of hard-fought civil rights progress." Jews surely know that America is not colorblind. But why is there little Jewish outcry for the stranger in our midst today?

Because we are no longer the primary victims of racism, we have forgotten what its sting feels like. Because discrimination has become so remote to us, we have failed to show sufficient concern and compassion to those still humiliated by it.

*Al chet shechatanu lefanekhah biemutz halev.* Dear God, forgive us for the sin that we have committed against You by hardening our hearts. Does not our Torah teach, "You shall love your neighbor as yourself?"

Does not the Torah instruct us 36 times to care for the stranger in our midst? Does not the Torah state unequivocally "You shall not stand idly by while your neighbor bleeds" (Lev. 19:17). But our neighbors do bleed, and we have expressed no outrage on their behalf. Both as individuals and as a community, we need to atone with deeds.

There are many positive actions you can take in order to promote racial reconciliation by asking yourself these questions: "How wide is my circle of friends? How diverse is my holiday card list? How integrated is my neighborhood? Do I belong to private clubs that exclude? Do I have the courage to tell a friend not to tell an ethnic joke in my presence? How often do I go out of my way to interact with people who are different?" (Jim Carrier). "We have torn down the barriers in our laws. Now we must break down the barriers in our lives, our minds, and our hearts" (President Clinton).

There is one additional and simple act you can do to strengthen the bonds of friendship between Blacks and Jews in our summit community. That is to be present for our creative Shabbat service featuring jazz interpretations of Jewish and African-American sacred music with our friends from Fountain Baptist Church and AME-Zion Church. This get-together was snowed out last February. So please reserve the date of Friday night, November 17 to come to your temple and to welcome our friends from Summit's African-American community.

On this Kol Nidrei night, night of profound conscience, let us rejoin the struggle to win equal justice, equal rights and equal opportunity for all. Let us dismantle racism in America and its infectious presence in the death penalty.

Let us hearken to the sacred words of the great prophet Isaiah that we shall hear in the Haftarah reading for tomorrow morning. "This is the fast I look for: to unlock the shackles of injustice, to undo the fetters of bondage, to let the oppressed go free, and to break every cruel chain." Thus saith Adonai!