Is This the Land of the Free?

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One hundred years ago tomorrow, President Woodrow Wilson established by proclamation that June 14 should be celebrated every year as Flag Day in America.

Our national anthem asks, "Oh, say does that star-spangled banner yet wave o'er the land of the free and the home of the brave?"

I have that same question this morning. Is this the land of the free?

In many respects, yes.

Two disturbing stories in the paper this week, however, pose that question. Is this the land of the free?

Kalief Browder spent three years of his young life, ages 16 to 19, in jail at Rikers Island in New York City. For nearly two of those years he was in solitary confinement.

Browder had been accused in 2010 of stealing a backpack. He never stood trial. He was never found guilty of any crime. He was trapped in that jail because he and his family could not afford the $3,000 bail.

While Browder was in jail he tried to commit suicide several times. Other inmates and even correction officers repeatedly beat him.

Throughout this long ordeal, Browder insisted on his innocence. He refused several offers from prosecutors to take a plea deal. Under one of these he would have been freed immediately. He would not plead guilty to anything, though, because he was innocent and did not want to admit to any guilt.

He finally got out of jail only because prosecutors dropped the charges. In the course of the three years Browder was being held, they lost contact with their only witness to the alleged crime.

After his release, Browder suffered from the effects of his confinement, becoming increasingly paranoid.

He was never able to recover from the years he spent locked alone in a cell for 23 hours a day. He was uncomfortable around people. He shut himself in his bedroom for long periods, almost recreating the conditions of solitary confinement.

One week ago, Browder pushed an air-conditioning unit out of a second-floor window at his parents' home, wrapped a cord around his neck and pushed himself out of the opening feet-first. His mother heard a noise, went outside to the back yard, and saw that her youngest child had hanged himself.

He was 22 years old.

Kalief Browder and many thousands like him do not live in the land of the free. We incarcerate them pending trials that are often long delayed. They are in jail because they cannot afford bail. They are presumed innocent until proven guilty, but they are surely being punished by incarceration, to say nothing of the brutal treatment many receive at the hands of other inmates and even the guards. All because they are too poor to pay for bail.

What can we do? We can urge our state legislators to support Senate 802, a bill now pending in the Massachusetts legislature. The bill creates a pretrial detention system that recognizes the presumption of innocence and the harms caused by our present bail system. Passage of this law would create a justice system that is more just. It would also reduce overcrowding in jails and, incidentally, save taxpayer money now being wasted by the present system.

In the nine years between 2005 and 2014, pretrial detention increased in Massachusetts by 23 percent.

People who can afford to pay their bail can also go on supporting their families or continuing their education. If they cannot afford bail, however, they have to go through the obstacles of pausing their lives and are more likely to commit recidivism; pretrial detainees are six times more likely to return to jail than those who were not incarcerated before trial.

Massachusetts jails and prisons are overcrowded by up to 155 percent. The overcrowding in jails could be alleviated by using electronic monitoring as an alternative to incarceration. Those charged with nonviolent crimes, such as the claim that Kalief Browder stole a backpack, should be enrolled in an electronic monitoring program instead of being locked up in a facility. There is a high financial cost for the state and social cost for defendants of having people await trials in jails. An electronic monitoring program is cheaper on both fronts. Defendants would have the ability to return to their lives fully and freely until they are tried. The idea of innocent until proven guilty is currently obsolete in Massachusetts because of the bail system, but it can be restored through reform that ensures liberty prior to trial.

Other states have reformed their pretrial systems. Massachusetts needs to join them. And we have a moral imperative to advocate for that change, in the interest of justice.

The Torah teaches us, "Tzedek, tzedek tirdof" – "Justice, justice you shall pursue." We have an opportunity to pursue justice by urging that Massachusetts change its pretrial detention system.

This week I read also about another gross injustice that we need to help fix. It's the case of Shaker Aamer.

Two weeks ago, four members of the British Parliament traveled to Washington to argue for the immediate release of Shaker Aamer. Our country is imprisoning him at Guantánamo Bay. His wife and four children live in London but he has yet to meet his youngest child, Faris, who is now 13.

Our visitors from Great Britain were Jeremy Corbyn and Andy Slaughter, members of the Labor party, and David Davis and Andrew Mitchell, members of the Conservative party. In other words, they come from the full spectrum, left and right, of British politics. They told the New York Times that they agree on almost nothing, with this exception: Aamer, a British permanent resident, must be freed and transferred to British soil immediately.

After Nine Eleven the United States and our allies in the so-called War Against Terror distributed flyers in Afghanistan offering a bounty to anyone who turned in a suspected terrorist. Aamer was picked up in Afghanistan three months later. He was doing charity work there. Someone turned him in to collect the bounty.

We took Aamer to the notorious Bagram Prison and brutally tortured him there. We then sent him to Guantánamo in February 2002. He remains there now, thirteen years later. No evidence has ever been presented that he is a terrorist. He has had no kind of trial or hearing.

Five years later, in 2007, the administration of President George W. Bush cleared Aamer to be released. But he was not released.

Three years after that, in 2010, the administration of President Barack Obama again cleared Aamer for release. This decision resulted from an arduous process requiring unanimous agreement by six agencies, including the Central Intelligence Agency, the Federal Bureau of Investigation and the Departments of State and Defense.

Still, despite these two clearances, Aamer remains our prisoner in Guantanamo five years after the second clearance for release.

Earlier this year, during his visit to the United States, British Prime Minister David Cameron asked President Obama to release Aamer. The president promised to pursue the matter.

On March 17, the House of Commons passed an unusual unanimous motion calling for Aamer's immediate release and transfer to Britain. Since that time little, if anything, has been done by the United States.

When Barack Obama ran for office, he promised to close the Guantanamo prison. That has not happened.

The administration claims that it can't close Guantanamo because Congress won't allow it.

But, under current legislation, Obama could give notice to Congress and then transfer Aamer 30 days later. The British government has asked us to do that. We haven't complied.

Some of the people the British visitors lobbied during their visit made vague references to the possibility that there may be "security considerations." Our visitors were insulted by this excuse. It suggests that Britain does not have the legal structures, the security and intelligence skills, or the capacity otherwise to address any issues with Aamer. That is plainly false.

Great Britain, after all, is America's most trusted ally. Its troops are deployed together with ours in a joint determination to defeat fundamentalist terrorism. The British government, from the prime minister on down, would not press this case with such determination if they believed that Aamer would put either Britain's allies or its own citizens at risk.

These four came to Washington to meet with Obama administration officials and senators to express the British Parliament's anger at the fact that, after twice being cleared for transfer, Aamer is nevertheless facing his 14th year of detention. They were astonished to find an unacceptable degree of incomprehension among the senators they met from both parties. Their lack of knowledge about Aamer's case indicates a troubling failure by the White House to communicate its importance.

Their impressions were confirmed during meetings with the president's special envoys for the closure of Guantánamo. Although almost five months have passed since Cameron's request to Obama, the Defense Department's special envoy, Paul M. Lewis, and the State Department's acting special envoy, Charles Trumbull, were unable to adequately answer questions regarding a timeline for Aamer's transfer.

If the president has any intention of closing Guantánamo, it will not be accomplished by complaining about Congress, whose members seem to have not been given even basic information about the detainees still held there or about the special case of Aamer.

This is a particularly unforgivable omission in Aamer's case because he has never been charged with anything, has been twice cleared for transfer, and is suffering

from ill health. Over a decade in Guantánamo would be a long punishment for any crime, if one had actually been committed. Fifteen other British detainees have recently been returned to England. Not one of them has been guilty of recidivism. Indeed, while the British demand for Aamer's return has not been granted, the American government has seen fit to pay for the transfer of other detainees to Kazakhstan and Uruguay — neither of which has a security structure remotely equal to Britain's. There is simply no reason, domestic or international, for the United States to keep Aamer in custody.

Of course Aamer is not the only prisoner at Guantanamo. We are still holding 122 men there, nearly fourteen years after Nine Eleven. But I'm focusing on Aamer because his case was recently publicized and is outrageous.

What can we do? We can write to our representatives in Congress and urge them to review Aamer's case and pressure the Obama administration to release him or, at the very least, provide a persuasive rationale for rejecting the British demand to repatriate him there. I urge you to write to Senator Markey, to Senator Warren, and to your Representative. For the many here whose representative is Congressman Stephen Lynch, I particularly recommend writing to him because he is the ranking minority member of the Subcommittee on National Security of the House of Representatives Committee on Oversight and Government Reform. He has access to classified information on matters of national security. He should be in a good position to help Shaker Aamer.

"Tzedek, tzedek tirdof" – "Justice, justice you shall pursue."

Tomorrow is Flag Day. Let us each do our part now to reform the pretrial detention system in Massachusetts, to end the injustices at Guantanamo, and to help our flag still wave o'er the land of the free.

Amen.

To advocate for the two causes described in the Sermon:

The first is to reform the system of pretrial detention in Massachusetts. Thousands of poor people are locked up awaiting trial, presumed innocent but imprisoned because they are too poor to pay the bail set as a condition of pretrial release. The Massachusetts Senate is considering a bill to reform this system. Please read about Senate 802 in the attached flyer, then contact the offices of the lead legislators to tell them you support the bill and want to see it passed. To do this contact Rebecca Miller in Rep. Sannicandro's office: rebecca.miller@mahouse.gov or 617-722-8946, or Matt Hartman in Sen. Donnelly's office: matthew.hartman@masenate.gov or 617-722-1438. If they have questions you can't answer, please refer them to me.

The second is to insist that our government immediately release Shaker Aamer from Guantanamo Prison. Please write to your Senators and Representative to ask them to pursue his release now. For those who live in Braintree, Quincy and other communities in the Eighth Congressional District of Massachusetts, please write that request to Congressman Stephen Lynch, Ranking Minority Member of the Subcommittee on National Security. To do that, use THIS LINK. causes described in Sermon:

The Harm Reduction & Drug Law Reform Caucus

Pretrial & Bail Reform for Massachusetts

The Problem: The intention of the bail process is to ensure that those charged with a crime show up for their court. In current practice, money bail is set at somewhat arbitrary amounts based on charge. Money bail is a main driver in unnecessary detention of many low-risk pretrial defendants and inappropriate release of high-risk defendants who have financial means and therefore can afford their bail.

The Money-Bail System is:

- ***Costly*** (by detaining too many people who could otherwise safely remain in the community.)
- ***Endangers public safety*** (by releasing high-risk defendants who can afford the bail set)
- Significantly ***contributes to overcrowding***.

Fast Facts:

- Nationwide, 60% of our incarcerated population are pretrial - as in, they haven't been convicted of anything.
- Nationwide, 70% of those held pretrial, are detained because they are unable to afford the bail set.
- Nationwide, our ineffective pretrial system costs the country $9 Billion annually.
- Statistically, those who are detained pretrial have worse outcomes than those who are able to afford bail.
- In Massachusetts, everyday, over 5,000 people are held pretrial.

The Solution:

What Sen. Donnelly & Rep. Sannicandro's Pretrial/Bail Reform Bill does:

1. Moves from a wealth-based to a risk-based system.
2. Requires the consultation of a validated risk assessment tool to help judges make more informed release/detention decisions based on the risk of the defendant.
3. Creates a Pretrial Services Agency within the Department of Probation responsible for the initial risk assessment as well as overseeing the supervision of pretrial defendants.
4. Requires the collection and analysis of bail data consistent with best practices outlined by the National Institute of Corrections.

Things to know about the bill:	**Expected outcomes:**
• Consistent with ***American Bar Association*** standards. • ***Successful precedence*** in many states including KY, CO, OH, VA, D.C., and ME. • Helps judges to make more informed decisions while ***protecting judicial discretion.***	• Decrease in overcrowding • Decrease in cost • Increase in public safety rates • Decrease in failure to appear rates • More effective criminal justice system

The Harm Reduction and Drug Law Reform Caucus is a coalition of legislators, working to address the root causes and symptoms of mass incarceration through comprehensive policy reform, education, and coalition building.

Outcomes for Pretrial/Bail Reform in Maine:

- 98.8% Appearance for court rates.
- 93% Public safety rate (no new criminal conduct)
- More efficient case processing (reduced failures to appear, reduced pretrial misconduct)
- Reduction in jail crowding
- Cost avoidance & Safety

**http://mainepretrial.org/pdf/news/nac-webinar-2013.pdf*

Bail Reform in Washington D.C.

D.C. on Outcomes: "Over the last five years, an average **88% of DC's pretrial defendants were released** pending trial—of those, **89% remained arrest-free** (and of those re-arrested, less than 1% were charged with a violent crime) and **88% made all scheduled court appearances**. PSA supervised just over 70% of those who were released and, annually, 78% under pretrial supervision completed all supervision requirements. Partly because of these successes, the city's jail operates at below 60% of its rated capacity with only about 12% of its population being pretrial detainees."

D.C. on Supervision: "Certainly, there are defendants that need close supervision, but most do not require resource intensive conditions. An average 25% of defendants in Washington, DC, are released on personal recognizance with no additional court-ordered conditions. Only 10% of defendants on pretrial supervision are on higher-level supervision (which includes electronic surveillance and home confinement), while 25% receive substance use disorder treatment and/or mental health services. Almost two-thirds of supervised defendants are ordered to comply with conditions—such as drug testing, weekly telephone or in-person reporting, and stay-away orders—that require more moderate resources to manage. Following the evidence-based principle of matching supervision and services to individual risk levels makes sense not only in ensuring fairness and defendant accountability, but also in controlling and managing costs"

**http://www.naco.org/programs/csd/Documents/Criminal%20Justice/County%20Justice%20Program%20Examples/Washington,%20DC%20-%20Pretrial%20Services%20Agency.pdf*

Additional Resources:

Bail Fail:
http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf

Measuring What Matters:
http://www.pretrial.org/download/performance-measures/Measuring%20What%20Matters.pdf

Money as a Criminal Justice Stakeholder:
http://www.pretrial.org/download/research/Money%20as%20a%20Criminal%20Justice%20Stakeholder.pdf

ABA Standards on Pretrial:
http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.authcheckdam.pdf

For more information, please feel free to contact Rebecca Miller in Rep. Sannicandro's office ext.8946 Rebecca.Miller@Mahouse.gov or Matt Hartman in Sen. Donnelly's office at ext. 1438 or Matthew.Hartman@masenate.gov