

Pandemic forces us to deal with justice system

By Juval Scott

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I am the Federal Public Defender for the Western District of Virginia, and I, along with ten other attorneys, have the privilege of representing the indigent individuals charged with federal offenses in the western half of the State. Our office's mission is to provide services consistent with our core values: compassion, courage, competency, creativity, and collaboration. These values shape the way we practice and, more importantly, view the humanity of our clients.

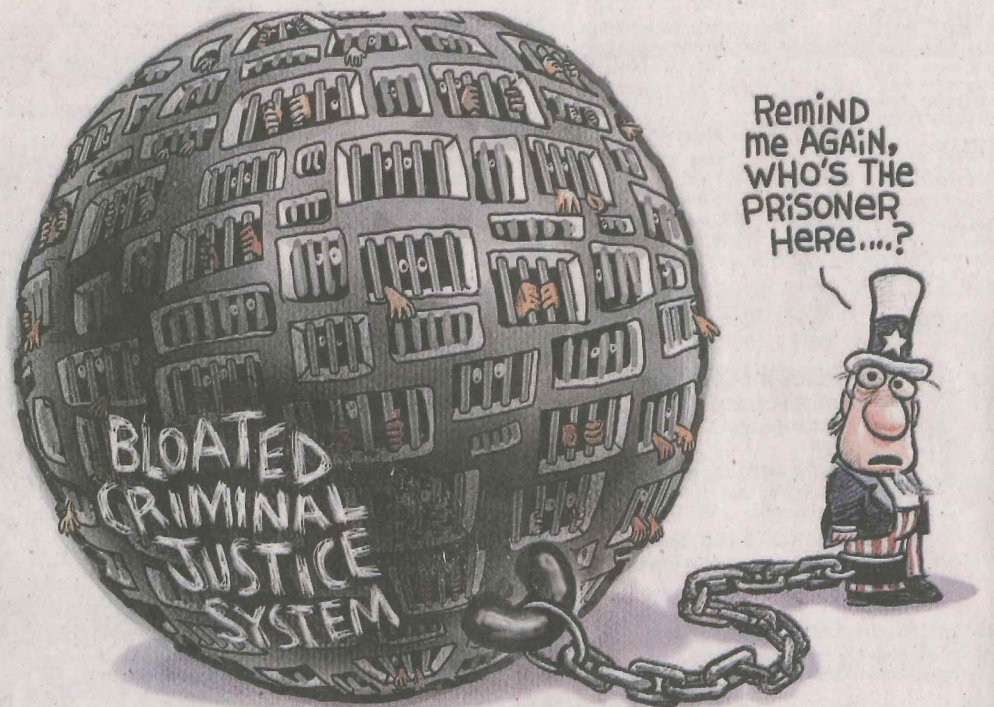


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Our clients' humanity takes on special significance as we navigate the COVID-19 pandemic. Many of our clients are housed in jails throughout Virginia and in prisons all over the country. We are well familiar with the term mass incarceration — a term that has become part of the national dialogue among both conservatives and liberals. But mass incarceration is more than a term of art for me and my colleagues, and its impact is magnified during this time of crisis.

Jails are overcrowded; prisons are overcrowded; immigration detention facilities are overcrowded. Those of us who routinely visit prisons and jails know how vulnerable our clients are because of age, various health problems they had before incarceration, health problems they contract after incarceration that are associated with being crammed in tight spaces with others, deprived of proper hygiene and forced to breathe recycled air day in and day out. Social distancing, difficult for the average person, simply is not a viable option for incarcerated persons. For them to distance themselves, they have one unappealing option: do something that lands them in solitary confinement and lose what few "privileges" one has in jail—the "privilege" to exercise, the "privilege" to use the phone, the "privilege" to eat outside your cell, and the "privilege" to do precious little besides pace in a room about the size of a small walk-in closet that they share with a cellmate.

Consider the staggering statistics: According to a 2018 report from the Bureau of Justice statistics, nearly 2.2 million adults were held in America's prisons and jails at the end of 2016. That's a rate of 655 per 100,000 residents—the highest incarceration rate in the world. Virginia is worse—topping the national incarceration rate by locking



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up 680 per 100,000 adults for year-end 2016. Though the United States accounts for less than five percent of the world's population, it accounts for almost 25 percent of the world's prison population. Indeed, we are number one in incarceration rate, beating out China, Russia, Iran, and other countries we routinely condemn for human rights violations. And sadly, many of those we incarcerate have not been convicted of a crime; they are awaiting trial and cannot afford to pay a bondsman to post a bond. The Vera Institute of Justice noted there was a 433 percent increase in using pretrial detention between 1970 and 2015.

Pretrial detention is an impediment to the judicial process. The accused's ability to

not work, support family, contribute to the community, and demonstrate that alternatives to incarceration are a better option in their individual cases, resulting in harsher sentencing outcomes and further contributing to this country's prison overpopulation.

The bottom line is simple: We put too many people in jail, and we keep them there too long. And now many people that should not be held in custody are unnecessarily at risk.

The COVID-19 crisis has focused our attention on things many of us never considered: from the alarming, our vulnerability to a highly contagious, deadly virus, to the relatively mundane—why the run on toilet paper for goodness sake? It should also focus our attention on the pressing need to do something about this country's addiction to incarcerating people. We need more extensive bail reform efforts—people should not be in jail because they are poor. We need to take a hard look at mandatory minimum sentence laws that make the prosecutor, by far, the most powerful actor in

the criminal justice system—certainly in the federal system. And we need to take a critical look at the well-documented sentencing disparities that exist due to immutable characteristics. If we finally address these issues, this pandemic may not be a complete disaster.

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meaningfully assist counsel during the motion and trial phases of their case is diminished. In some districts, the Western District of Virginia being one, clients are not permitted to have a copy of their discovery, reducing their ability to help guide defense counsel's investigative efforts. Clients in pretrial custody can-