

U.S. CRIMINAL JUSTICE SYSTEM IN DIRE NEED OF REPAIR

By **BERNARD B. KERIK**

For more than two decades, constitutional scholars, former Attorneys General, federal and state judges, criminal defense bars as well as past and present federal prosecutors have increasingly called into question our criminal justice and prison systems, which many have said are threatening the very foundation of our democracy.

As someone who once headed two of the largest law enforcement organizations in the world and is now a convicted offender living within the federal prison system, I bring a unique and perhaps historical perspective to this issue. I know how the system is supposed to work and what it is supposed to accomplish. Based on what I have personally witnessed since my incarceration, I strongly agree with the national consensus: *the system is in dire need of repair.*

For nearly six years I managed the New York City jail system, including Rikers Island - once called the most violent system in the nation - and was responsible for overseeing 13,000 uniformed and civilian staff as well as 133,000 annual inmate admissions. I also commanded the NYPD at 55,000 strong, with an annual budget of \$3.2 billion. I have conducted criminal justice assessments for the U.S. Justice Department, the Kingdom of Jordan, and the government of Mexico City. In Jordan, I was also responsible for the design and construction of a 400-bed super-maximum security prison for the region's most dangerous and deadly terrorists.

While serving as New York City's Correction Commissioner, through compliance, I successfully vacated dozens of federal consent decrees and achieved unparalleled and historical reductions in inmate-on-inmate violence (slashing and stabbings), serious use of force by staff, assaults on staff, staff sick time abuse, and overtime spending. Our system became one of the most efficient, clean, safe, and secure in the country. Our successes were unprecedented.

However, I am sad to say that nearly everything I believed about the federal prison system when I was New York City's Police and Correction Commissioner has been contradicted by my own incarceration. I have learned that most of what I thought to be true is just not a reality. I'm convinced based on what I have witnessed that members of Congress, federal judges, and prison administrators themselves are in the same position. They just don't know what the federal prison system is *really* like.

Unfortunately, there is no survey, inspection, or tour or magic window to look through that allows judicial leaders-or anyone-to see reality, and what it's like to live as a prisoner. Without living within the system, one cannot fully see its flaws, failures and injustices or have any idea what it's like to live by a clock, where time stands still. No matter what your vantage point from the outside, it is difficult to clearly see and feel the unnecessary damage done to many of those incarcerated, their families, and society as a whole.

And just like me, if members of Congress, judicial leaders, prison administrators, and the general public do not know this problem exists, they have no reason to care and, worse, no reason to fix it. However, failure to fix our criminal justice system, as it stands today, will - I predict - ultimately be the demise of our country as we know it. This problem is like a fast-growing cancer that has yet to be fully diagnosed. It is eroding the very foundation of our democracy.

Alarming prison population growth

According to published reports, the federal prison population has grown from 25,000 in 1980 to an estimated 210,000 as of March 17, 2011. This is an increase of 840% over the past 31 years. Considering that the U.S. Department of Justice and other federal law enforcement agencies have not come close to an 840% increase in enforcement and arrest activity, one has to ask, "What has caused the explosive growth?" I believe the primary answer stems from the elimination of the former federal parole system and the creation of the federal sentencing guidelines and mandatory minimums.

These guidelines and mandatory minimums are extremely detailed, complex, and difficult to understand. They have provided prosecutors unprecedented authority to influence sentencing outcomes and the ability to enhance and prolong a defendant's sentence, even for conduct acquitted by a jury. The guidelines allow little to no room for non-incarceration sanctions by the court and do nothing to encourage the use of alternative penalties.

In a speech before the American Bar Association (ABA) in 2003, Supreme Court Justice Anthony M. Kennedy expressed his concerns about the inadequacies and injustices of our correctional systems. He called for (1) the federal sentencing guidelines to be revised downward, and (2) a repeal of the mandatory minimums, most of which he felt were "unwise and unjust." He stressed that punishments were too severe and sentences too long. Justice Kennedy has not been the only one with concerns about our criminal justice and prison systems. U.S. Attorney General Eric Holder, as well as former Attorneys General Edwin Meese III, who served under President Ronald Reagan, and Richard Thornburgh, a Republican who served under two Presidents, among others, have expressed similar concerns, particularly with regard to sentencing guidelines and mandatory minimums. Republicans, Democrats, conservatives and liberals alike have, in one way or another, all said the same thing.

Inaction is no longer an option

I have been stunned to read their prophetic words and realize the system remains the same-or worse - today, many years later. More disturbing than their words is the lack of response to them. My fear is that the lack of attention to this issue stems from the old adage, "Out of sight, out of mind." In other words, our legislators and the American public do not care about a problem they do not know exists. Unless they see it for themselves-either personally or through eye-opening discourse-they will not act. Based on what I have seen and learned here in the federal prison system, for our country's sake, inaction is no longer option.

The U.S. Federal Bureau of Prisons (BOP) presently has 210,000 prisoners in custody, and according to public records, is 35% over the rated capacity, meaning the BOP is housing 35% more inmates than there is room for. This is accomplished by double and triple bunking inmates in high, medium and low security facilities. Overcrowding in any jail or prison environment creates frustration, friction, and confrontation. The possibility of violence against inmates and/or staff becomes extremely high. To reduce these possibilities, prisoners must have access to programs that will keep them occupied and help in reducing recidivism, and "good time" incentives that will encourage them to comply with institutional rules. In addition, prison administration must do what it can to reduce the overcrowding.

Currently, there are 23,000 men being housed in federal minimum security camps, the lowest classification of housing within the BOP. In the camp where I am located, there are approximately 300 inmates that have been convicted of non-violent drug or "white collar" offenses. They pose no threat to society or the community, and they are not escape risks. The housing units in a minimum security camp consist of dormitory-style units similar to that on a military base or college campus, and there is extremely minimal staffing. There are no fences around most camps, no locks on the doors, and in reality, I was far more restricted on home confinement or house arrest for the nearly six months before I arrived at my present facility.

About 85% of the prisoners at the facility where I am have been convicted of non-violent drug offenses; about 20% of these are first-time offenders. About 15% of the camp's population is here for white-collar crimes. Most are first-time offenders as well.

Hopelessness and despair permeate

This has been an eye-opening, gut-wrenching learning experience since the day I arrived. Most important, I have learned that just because these men are here in prison, they are not all "bad" men. Some are; some are simply incurable. Others committed crimes out of habit, some out of greed, some out of stupidity, and some had no clue they were even doing anything wrong. Most would give anything to turn back time to make it right.

I have listened to their stories as well as their gripes and complaints about our justice system. Five things stand out. First, their sentences. I have been stunned, absolutely stunned, by the length of their sentences. Second, we are imprisoning people who belong in hospitals or drug treatment centers. Third, real rehabilitation within the system is non-existent; fourth, because they have no money for legal representation, many of these men who should not be here are rotting away in prison, and, last, there is an overwhelming feeling of hopelessness, despair and cynicism that permeates the compound.

Do keep in mind that during my career as a police officer and drug agent, I stood in courtrooms with no mercy or compassion as people were sent to prison. But these were BAD people who did BAD things. These were men who brutally executed and murdered other men. They attempted to murder my partner and me. These were men from whom we seized millions of dollars in drug proceeds and tons of cocaine, not ounces or grams. I believe today, as I did then, that they deserved to go to prison for 10, 20, and 30 years to life.

However, similar sentences have been rendered for many of the non-violent low level drug and white collar offenders in this minimum security camp. How could this be fair? I was stupefied when one non-violent inmate told me he had been sentenced to 30 years for a drug conspiracy and that he had already served 19 years of his time. Thirty years for a non-violent drug conspiracy in which he was found with no drugs in his possession! Why is he still here? The more I hear, the more I understand the true meaning of Justice Kennedy's words.

There are young men in this minimum security camp who have been convicted of low-level drug offenses and sentenced to 10 years in prison. Five (5) grams of cocaine have put them in prison for 10 years, some more. Five grams is the weight of two sugar packs in a coffee shop. Threatened with even longer sentences by federal prosecutors, many of these men in their late teens and mid-20s and 30s simply pled guilty for sentences of 10 years or more, some for first-time offenses. Some never had drugs in their possession or even knew the people they were supposed to have conspired with. Think about it: 10+ years in prison for such crimes that, in a state criminal justice system, would garner months, if not probation, for first-time offenders.

These men are doomed to failure unless they receive shorter sentences and are mandated to participate in lifestyle and self improvement programs that will help them to return to society as better people. While well intended, the BOP and its ability to meet its stated goals and objectives to provide real work and vocational, educational and rehabilitative programs, fall substantially short. Education, discipline, occupational training, and real jobs will reduce recidivism, not prolonged incarceration, that some believe is a crime reduction strategy.

Draconian sentences without discipline, education, and occupational training are destroying these men, shattering their families, and leaving their children fatherless, spurring welfare dependency, increasing recidivism and creating a cycle of crime and incarceration that will only increase for generations to come.

Simply warehousing prisoners

As for the law-and-order and tough-on-crime advocates who are skeptical of sentencing reform, I suggest that you are probably under the same assumption I was until I arrived here: the system makes every effort to rehabilitate those incarcerated. But, in reality, it does not. We as Americans have been told for decades that we are spending billions of taxpayer dollars each year on prison systems and rehabilitation, but what I have found is that we are spending billions to simply warehouse prisoners. Rehabilitation is nugatory at best.

To give you a better understanding of my first-hand observations, consider this: Over the past few decades, the system has been overloaded with non-violent drug offenders serving more than ten years in medium and low security facilities. These offenders eventually drop below their ten year "out" date and get moved to a minimum security camp.

The only way to describe the daily environment in this minimum security camp is that it compares to a junior high school, without classes and girls. Grown men sit around like teenage boys talking about old times, drugs, guns, cars, jewelry, women and sports. Because they have limited contact with the outside world, this place has become their home, and the other prisoners have become their family.

Then you have young non-violent low level drug offenders who are sentenced to five to ten years and wind up here in the same camp with the older prisoners who are serving out the final years of their sentences. This is absolutely the worst thing you could do to these younger men. Some of them have graduated from high school, a few attended college, many are uneducated, and some are completely illiterate and cannot read or write.

However, once they arrive here and mix into their new surroundings and the fear of prison dissipates, they begin their "new education" with the older institutionalized inmates as their teachers. They learn how to lie, cheat, steal, con, manipulate, and gamble. Their vocabulary diminishes into a profound ghetto slang, their posture changes into an intimidating swagger, a fist bump replaces a handshake, and a grunt replaces "Good morning." They have no respect for the privacy of others. A normal conversation consists of yelling and hollering, and minor disagreements often result in threats of violence. Here they learn more about the drug trade than they did on the outside, and they make all the contacts they need to further themselves in criminal activity once they leave. That is just for starters.

Their surroundings begin to demoralize and demean them, they lose whatever occupational skill sets they may have had before being incarcerated, and they go from a societal value system to an institutional one that lacks respect, discipline, and responsibility.

Keep in mind that I am talking about non-violent drug offenders whose families and communities have already failed them. Many of them are first-time offenders who, with the right guidance, education, and programs, or a mandated military-style boot camp, could leave prison better than when they arrived. However, the system does not provide it. The younger they are and the longer they are imprisoned, the less of a chance they will have for any type of successful integration back into society.

Unlike their families and community, our criminal justice system must not provide them an option of failure. If we do not shorten their sentences, make their stay more valuable, and get them out of the system faster, smarter and with an intended goal of improving themselves, we may as well sentence them to life in prison or death because that is ultimately what we are doing.

For the non-drug or white-collar offender, the system demeans and demoralizes them as well, but the cost to society is far more devastating. In this camp, such men are serving sentences of 6 - 120 months. Most of them have led productive and successful lives and had never been in trouble with the law until now. They did not need to be sentenced to years in prison to be punished or learn their lesson. For them, just surrendering to prison, being strip searched and thrown into their new living environment was rehabilitation enough to ensure they never return. However, what happens next is perhaps one of the most devastating and damaging contradictions of our entire criminal justice system.

Collateral damage devastating

Most of these men are highly educated-doctors, dentists, CPAs, lawyers, corporate executives, politicians and various government employees, including some military. Nearly all of them possess aggressive work ethics and highly desired skill sets. They possess everything that the system preaches, promotes and encourages the drug offenders to accomplish, but then, because they were successful prior to their incarceration, the system seems to use that success against them. They get painted with the same broad brush of vilification as some of the nation's lowest and worst criminals.

For most, regardless of their family ties, or what they may have done for society or their local communities, or their military service or contributions to their country, mercy or leniency of any kind are unacceptable considerations by most federal prosecutors, who routinely seek the maximum punishment under the sentencing guidelines and are unhappy with anything less. Over the past 20 years, the system has become completely unforgiving.

Many of the men in this camp, both drug and non-drug offenders, are good men who made a mistake. They deserve to be punished, but the punishment should fit the crime. They did not rob, rape, murder, or commit a violent crime, but you would never know this by the way they are treated. They are demeaned, degraded and financially annihilated so badly that the toll for many is close to unbearable, causing them depression, serious health issues, enormous cynicism, and unfortunately for some, permanent psychological damage. The far-reaching and collateral fallout to their families is often even worse.

The impact on the next generation for almost every man in this camp is grave, though rarely talked about...it is too painful.

It is heart-breaking to confront this truth: a father's ability to help, teach, guide and mentor his children while incarcerated is close to impossible. For every day they are separated, the bond between father and child diminishes, and they grow further apart. The system encourages men to communicate with their children and families, but then prevents them from doing so on multiple levels. Phone calls and emails are limited and are far more costly than on the outside. An inmate makes .12 cents per hour working within the prison system, but is charged .23 cents a minute for phone calls and .05 cents per minute for emails. Oftentimes, distance and the cost of travel make visits infrequent or preclude them altogether.

No matter where you came from, or what you have been incarcerated for, or how long your sentence, the separation between a father and his kids creates pain and anxiety for both. You cannot teach and mentor a child in absentia. Any attempt to discipline your child during a visit or long distance - by phone or email - creates friction, added anxiety, anger, upset and, ultimately, distance. They say that justice is blind. No one comes to understand that better than the children of someone in prison. If they are too young to realize it today, I promise that over time it is something they will learn and never forget.

Think of it this way: A young man, 31 years old, arrested for a first-time, non-violent drug offense is sentenced to nine years in federal prison. He has an 11 year old son whose "collateral sentence" is nearly half of his lifetime without his father. At perhaps the most critical time in that child's life, when he will need his father most, he will be without him and on his own. If there were alternatives to incarceration, if there were alternative penalties, if there were boot camps or something other than our reliance on mandated incarceration and these draconian sentences, perhaps they would both be saved. Instead, with the mandatory minimums and sentencing guidelines, the chances are extremely high that the son will one day replace the father in this living hell.

For a father who loves, adores and cherishes his children, a day in prison is like a week, a week like a month, and a month a year. Time virtually stands still, while the lives of his children pass him by. For those men, they can only hope and pray that their wives and/or family have the mental, emotional, and physical stamina and ability to make up for his absence in caring for his children. I thank God every day for my own wife, and the care she gives our youngest daughters.

But what happens to the children who aren't that lucky? They suffer the loss of love, support and mentoring of a parent, and because there is little to no compassion in the system, there is absolutely nothing a father can do. That is his greatest punishment, and ultimately, society's as well.

Please do not misunderstand: I am not saying that many of these men should not be punished or go to prison. Many should, but not for the length of time in many cases. Their sentences contradict our founding fathers real goals of justice. If there were alternatives, children and families would not have to pay such a high price for their fathers' long-term absences.

Grave economic impact

In all the years I spent in the correctional field, I never focused on the collateral damage to the offender, their families and, more so, to our society and country. My principal focus was the care, custody and control of the inmate population, and ensuring that the prisoners received the programs and services they were supposed to receive according to state and federal minimum standards. When I thought of incarceration costs, my only concern was the incarceration cost to house a prisoner within our system.

What I never thought about, until I arrived at this minimum security camp, was the economic collateral cost of incarceration to the American taxpayer and to our economy as a whole. The more I have studied this, the more I have been shocked by reality.

According to the latest figures from the government, the average cost to incarcerate a federal prisoner is \$28,284.00 annually. A person would naturally assume that an offender sentenced to three years in federal prison will cost the government and the American taxpayers \$84,852.00. Wrong! That cost is only to *incarcerate* the prisoner. The collateral economic costs of his three year incarceration far outweighs the government's out-of-pocket expense, and here's why: If that prisoner earned \$100,000 before his arrest and incarceration, the government loses the tax income on the inmate's \$100,000 annual salary, and the economy loses his cost of living spending.

That is a loss of \$300,000 to the economy, plus nearly \$85,000 for his incarceration. Then, add in the cost of the investigation, and at a bare minimum, the total is about \$500,000. As a result of their imprisonment, many of these men have to file bankruptcy. Their families are forced to depend on welfare or public assistance. Those are additional staggering losses to the American taxpayer and our economy.

Lastly, for criminal defendants to be ordered to pay restitution upon their release from prison, it will be close to impossible for them to do so. Most of them are left destitute as a result of the prosecution against them and their imprisonment, and their earning capabilities once released will be reduced by up to 60%. Ordering restitution in most cases amounts to nothing more than symbolism over substance, because it is just not possible. Once a defendant has been socially and financially incapacitated for life, where is the money going to come from? This is another enormous financial loss to our economy, not to mention crime victims who will never recoup their losses.

Using a real life example of one of the white-collar defendants here who had a very small company that employed five people, including himself, the basic loss to the American taxpayer and our economy for his three year imprisonment will run in excess of \$2 million in direct and indirect costs, not including unemployment benefits for those losing their jobs when his company closed. So, instead of this man's incarceration costing the economy and American taxpayers \$25,000 per year, it will ultimately cost us about \$660,000. Had he been placed on probation and fined and penalized substantially, he would have been punished, justice would have been served, and there would be no loss to the government. And, this is only one man, and there are thousands within the system with similar crimes and circumstances.

Mass incarceration is costing billions

Unnecessary and over-incarceration are costing our country billions more than the reported cost of incarceration. If the system allowed or encouraged alternatives to incarceration whereby many non-violent offenders were placed on home confinement and house arrest, with strict supervision, and allowed to work, pay taxes, take care of their families, and pay their fines and restitution, the government would be making money, instead of losing it!

And consider this: Criminal justice experts from the ABA, the Cato Institute, the National Association of Criminal Defense Lawyers, the ACLU, the Federalist Society and the Heritage Foundation, just to name a few, are raising serious concerns about over-criminalization by federal prosecutors who are increasingly investigating and criminally prosecuting people for what once was civil, administrative, and regulatory conduct. Have you ever thought that inflating your income on a credit card application or a loan application for a home, car, or college tuition is bank fraud and you could be sent to federal prison? What about a government employee who

falsifies his time and attendance records or uses government property, like a cell phone or computer, for his own personal use? Or a banker or corporate executive who buys a client or vendor a generous birthday or Christmas gift? In addition, under recently proposed legislation by the Justice Department, putting a false name, date of birth or photo on Facebook could become a felony.

Should you become the target of a federal prosecutor, each of these examples - and far less - could result in federal charges, and you being sent to federal prison. No one can escape federal charges and prison time if scrutinized and pursued relentlessly as some of the men I have met here. NO ONE!

Certainly, if a person commits a crime or makes a mistake, he should be held accountable or punished, but the punishment must fit the crime. "Punishment" should not automatically mean YEARS in prison. Our reliance on over-incarceration and draconian sentences for non-violent convictions are destroying people, families, and our society as a whole.

We seem to have lost sight of the intended purpose of our criminal justice system: *justice*.

We must institute real alternatives to incarceration - shorter sentences, probationary sentences, home confinement and house arrest, and greater fines and penalties. We must put a stop to mass incarceration.

We should also consider programs where first-time non-violent felony drug offenders enter a guilty plea for their crime, but receive a deferred sentence if they complete either a long-term residential drug treatment program, or military style boot camp. Successful completion could result in the dismissal of charges, thus avoiding a felony conviction and a criminal record, and giving these offenders a second chance.

In addition, we should consider adopting Virginia's risk assessment program which offers shorter sentences and diversionary programs to offenders deemed not likely to repeat crimes. (Of course, those deemed at-risk face stiffer penalties and sentences). Virginia Governor Robert F. McDonnell said that those leaving prison should have an opportunity to change, and he has moved to help state prisoners more easily regain their voting rights. He called America a "nation of second chances."

Unfortunately for a federal convicted felon, those words are nothing more than rhetoric.

'Dying with your eyes open'

One of the damaging and devastating realities for a federal convict is that the label "convicted felon" is, for most, a life sentence of financial and social devastation, negatively impacting the offender's employment possibilities, earning capability, and vocational licensing for the rest of his life.

Based on my conversations with other inmates who realize they have made a mistake and would give anything to turn their lives around, they see that label, "convicted felon," as something that will prevent them from attaining any type of success in the future. Based on what they have learned from the older prisoners in the system, the younger men see that label as a death sentence. "There's no use...it is hopeless," one young black man said to me. "I'll leave here worse than when I got here, then what?" Unfortunately, he could not be more right.

Hopelessness and despair begin on the day of sentencing when you stand before the court and are reminded that you are no longer an empowered citizen of the United States of America. You are told that your conviction will deprive you of valuable civil rights such as the right to vote, the right to sit on a jury, the right to bear a firearm, and the right to hold public office. Your conviction could prevent you from holding certain licenses such as law, real estate and others.

Most prisoners I am serving with feel the day they were sentenced was the end of their life. From that day on, as a young man here told me, "It's like dying with your eyes open." Despite my 30 years in law enforcement, I would have never known what he meant without being here to see it for myself.

In a free and democratic society such as ours, justice should not eternally slaughter one's rights to freedom and liberty, except in the most extreme cases. But it does...day in and day out. In the federal criminal justice system, the only way to expunge that criminal conviction and lifetime label of "convicted felon" is by presidential pardon.

Imagine this: A 22 year old United States Marine sold a pair of night vision goggles that he owned on eBay to an international exporter who did not have the appropriate U.S. government export permit. The Marine was charged and pled guilty to selling the goggles for export - a felony. He will carry with him the label of "convicted felon" until the day he dies.

As a result of his conviction, he lost his job and his home, and his life and new marriage were completely turned upside down, not to mention that, as a "convicted felon," he will face a lifetime of hardship, and financial and social sacrifice. And, if all of this wasn't bad enough, the federal prosecutor insisted on prison time, so he was sentenced to 36 months in federal prison.

This young U.S. Marine, who had barely begun his adult life and whose only real job was fighting for and defending the very freedoms and liberties that he has lost forever, is now destitute. Unless pardoned by the President of the United States, his punishment will last forever. Is that what our Founding Fathers had in mind when they wrote the U.S Constitution and the laws of our land? I just don't think so.

It is time to consider a way to give these men a second chance... a REAL second chance.

One of the most disturbing things I have discovered since my incarceration is that there are many men in prison who are indigent and do not have the financial wherewithal to afford an attorney for an appeal or legal issues that often arise as a result of being incarcerated, such as divorce, child custody, home foreclosures, tax issues, lawsuits and insurance issues, to name a few. The system is designed to further destroy what's left of these men once they arrive at prison, and without an attorney or some sort of legal assistance, they don't stand a chance.

I am also convinced there are innocent men in prison who would be free today if they had the benefit of an attorney to assist them with their appeals or court filings. Many of these men cannot read, and the laws are too complex and complicated. Unfortunately, many criminal defense attorneys see their job as complete once their client is taken away or runs out of money. Only a few continue to help.

Prisoners with a better understanding of the law are reluctant to help others, at the risk of them becoming a criminal target by federal prosecutors for "practicing law without a license." It has happened.

A man should not lose his Constitutional rights because he lacks the money to fight for them! But this is occurring every single day across America, and as a result, people who should not be imprisoned are rotting away.

Recent news reports have suggested that law graduates are having difficulties finding employment. I know exactly where they could be quite useful if Congress and the ABA would create a legal assistance program in places like this and for the men who need it the most.

In addition, it is time to address another issue: using jails and prisons to house the mentally ill or those in need of drug treatment programs. Here at this prison camp, I have seen two stunning examples of this.

When I first arrived here, there was a 44 year old man who suffered from mental illness, was partially blind, and had only a third grade reading level. He had absolutely no business being here. He belonged in a hospital or treatment center, not a prison. He was found mentally incompetent to stand trial by state authorities, so they turned him over to federal prosecutors who

ignored the state's findings and charged him with possession with the intent to distribute crack cocaine. His attorney urged him to accept a plea agreement of 128 months in prison. He signed a plea agreement that he could not read or understand to serve 10 years and eight months in federal prison.

After nine years in prison, he was released, but for the month before he left this compound, he paced and wandered around aimlessly, like an animal in a cage. When I approached him and asked him what was the matter, instead of being excited about leaving after nine years, his greatest concern was that he was afraid of getting lost... he had to take two buses.

There was a 24 year old man who, in 2005, pled guilty in federal court for manufacturing methamphetamine. He was sentenced to 40 months in federal prison, given four years probation and ordered to attend a residential drug treatment program. After attending the program and serving 24 months in prison, he was released. He found a job, was successfully employed and was attending evening college classes. Two years later, he relapsed, began using cocaine, and admitted himself into a treatment center to get help. When his probation officer learned of his whereabouts and circumstances, the young man was sent back to federal prison for 36 months because he failed a urine test, a violation of his probation. He needed treatment; he did not need three more years in prison.

For close to 16 months, until the day he left this compound, I watched this young man sit on his bed, staring into space, and slowly deteriorate. He needed therapeutic help on several fronts, but got none. He was "dying with his eyes open."

System can be fixed

The flaws, failures and inadequacies of the system are overwhelming. From within the system I see them clearly. I also know they can be fixed. With efficient and creative management and accountability, and the help of Congress, real reforms that are essential are possible.

For more than a century, Americans have stood proud of being global leaders in industry, technology, military, medicine and innovation. Recently, however, NAACP President and CEO Benjamin Todd Jealous reminded us of a stunning, sad and shameful reality: *America also leads the world in mass incarceration.* We are 5% of the world's population, yet 25% of the world's prisoners. How is that possible?

Have we become a society of what our forefathers feared most...persecution, oppression, abuse and mistreatment.

A repeal of the mandatory minimums and federal sentencing guidelines is critical. The sentences are unjust, unfair, too long and extremely severe. Real educational programs, discipline, and occupational training and job placement must be instituted for those incarcerated. Young first-time drug offenders should be mandated to attend military style boot camps that teach respect, patriotism, discipline, parenting, occupational and vocational training.

Non-violent offenders with the ability to work, pay taxes, take care of their families, and pay their fines and restitution should be considered for alternatives to incarceration such as home confinement or house arrest, probationary sentences, and stiffer fines and penalties.

We must seek funding to provide those incarcerated with legal assistance if they cannot afford it otherwise, and consider legislation that returns an offender's Constitutional rights once they have proven themselves worthy.

Congress must consider substantial sentence reduction initiatives for the federal prison system that would encourage positive inmate behavior and substantially reduce the number of inmates within the system. There are several Congressional bills sitting in the halls of Congress that would accomplish both.

One such bill or amendment calls for a retroactive enhancement of a federal prisoner's "good time" credit, from 54 days per year to 128 days per year. By doing so, it would create substantial incentives for inmates to comply with institutional rules, which would reduce staff confrontations and inmate-on-inmate violence within the system. Inmates who refuse to comply with institutional rules and policies could lose some or all of their "good time" credit, thereby prolonging their time in custody.

The enhancement of "good time" credit, which would be comparable to many state prison systems around the country, would also reduce the numbers of inmates within the system, thereby reducing overcrowding. Most important, at a time when Congress is desperately searching for ways to cut government spending, "good time" credit would reduce the BOP's annual budget by close to \$1 billion. Portions of those cost savings could be used for much needed inmate recidivism reducing programs, basic and in-service BOP staff training, and emergency and safety equipment.

The remainder would be an enormous cost savings to the American taxpayer, not to mention, once these inmates are released, they can begin to work, pay taxes, begin to take care of their families, and pay their fines and restitutions, another benefit to our economy.

Without these changes and more, the U.S. prison population will continue to grow in staggering numbers.

Former Speaker of the House Newt Gingrich recently said, "The effects of rampant incarceration in recent years have been devastating for families, neighborhoods and civil society." Even he has no idea how devastating. You really cannot get the whole picture from the outside looking in.

Foundation of democracy at stake

As a father, an American, and someone who has fought for and defended the very freedom and liberty that I feel are in jeopardy, I have been shaken to the core by what I have seen with my own eyes. I fear for all our children and their children as well.

We have allowed our criminal justice system to devolve into one that lacks fairness, mercy and compassion, and seems to pride itself on over-criminalization, conviction, mass-incarceration and the destruction of humanity. Sentences are too long, punishment too harsh, and true rehabilitation is non-existent. If Congress and the American people could witness what I have since my incarceration, there would be anger, there would be outrage, and there would be change. No one in their right mind would allow this system to continue as it is today.

To intentionally ignore the flaws, failures and injustices in our federal criminal justice system out of fear of being "soft on crime" should no longer be an acceptable excuse to do nothing. To over-criminalize, over-incarcerate and do little to nothing to rehabilitate those within the prison system is "wrong on crime," and is a threat to every American in this country.

In 1994, just after I was appointed to the New York City Department of Correction, I was told over and over by city officials that I should have never taken the job. "Rikers is too big, too violent and out of control," they said. "It can never be fixed." I felt otherwise. The month I took over as First Deputy, we averaged 150 stabbings and slashings in the system per month. Six years later, the month I was appointed police commissioner, there was only one (1). Change *is* possible.

In just six years, we went from being one of the most violent, overcrowded, and mismanaged jail systems in this country to an international role model of efficiency, accountability, and safety. With the help and support of Congress, our criminal justice and prison system can change as well.

I call on our country's leaders and the American people to take this growing problem seriously. The very foundation of our democracy depends on it.