

Our justice system must become more victim-centric

If the pandemic has had any kind of benefit, it's that it has raised awareness of the functions and dysfunctions of our courts and our prisons. But if the actions we're taking to correct these problems aren't considered thoroughly and acted on properly, the cost will likely come at the expense of children and victims of domestic violence and other violent crimes.



EUGENE M. HYMAN

Judge (Ret.), San Clara County Superior Court

Santa Clara Univ Law School

Eugene is a retired judge of the Santa Clara County Superior Court, where for 20 years he presided over cases in the criminal, civil, probate, family and delinquency divisions of the court. He has presided over an adult domestic violence court and in 1999 presided over the first juvenile domestic violence and family violence court in the United States.

[See more...](#)

If the pandemic has had any kind of benefit, it's that it has raised awareness of the functions and dysfunctions of our courts and our prisons. But if the actions we're taking to correct these problems aren't considered thoroughly and acted on properly, the cost will likely come at the expense of children and victims of domestic violence and other violent crimes.

Studies and media coverage have been plentiful on the subject of prison and local jail overpopulation in COVID-19's wake, exposing outrages that go far deeper than the pandemic. The public has been made more aware of and become more concerned about needlessly giving people criminal records -- the effect that has on employment, the effect it has on families staying together, on housing, and on recidivism.

We're increasingly concluding that less is more, that the scourge of the war on drugs is as futile as prohibition, that we can't incarcerate ourselves out of our problems. Courts have been generally more favorable towards leniency with the dangers of COVID-19 transmission.

I fully support this on a case-by-case basis, and I appreciate that because of the pandemic -- and the continuances and delays it has caused for criminal and civil calendars -- that courts are under pressure to solve cases as quickly as possible. We've rightfully identified that prisons and courts are overcrowded, and that criminal records are often far too debilitating and punitive.

But there are many cases where expunging records and reducing felonies to misdemeanors are an incredibly dangerous enterprise, the most immediate example to me being in cases of non-fatal strangulation and other equal violence. A person who puts their spouse in a hospital, who's statistically much more likely to commit homicide against that victim in the future, should not get a free pass because of concerns about the pandemic or our overburdened criminal justice system.

Pendulum swings are not good for society, as they give off confusing consequences and messages to criminal conduct.

As far as I can tell, there haven't been any mandates directing courts on how to reshape judicial standards to meet these calls for criminal justice reform or COVID prevention. And the standard has always been that there's very little cross-pollination between courts, meaning that absent additional fact finding, it's likely we're releasing violent potential reoffenders, and we might not even know it.

This fact-gathering is necessary thanks to the way court matters are siloed -- in most cases, a family law matter is a family law matter and an assault charge is an assault charge, and never the twain shall meet. An attorney in an assault case isn't going to go fishing through the records of every local domestic violence court in the hopes of finding some nugget of evidence to support their case, unless given clear motivation to do so.

Courts already have the power to circumvent these siloes, but few utilize it. Judges may not be able to order around the attorneys involved, but they are empowered to direct the probation department, in the case of a criminal case, to conduct follow-up investigations, which would include cross-referencing any appearances the offender's made in other courts. The framework is potentially there, but the staffing or desire is not there to communicate about parallel cases.

As it stands, the charges we're putting people away on -- and the charges on which they're ultimately now being freed -- likely aren't telling the full story.

Whether by individual mandate or legislative order, the system must be made more victim-centric. There's no shortage of reporting on the lack of faith that victims of domestic abuse have in the institutions we've established to protect them, and it should come as no surprise that many aren't eager to assist the case against their abusers. They're often afraid, conflicted, or simply lack confidence that their testimony or input will be used effectively.

The criminal justice system also has its fair share of implicit biases against these victims, a problem that remains as persistent and pervasive as ever. Attorneys who have seen matters play out similarly time and time again sometimes adopt an attitude that they can't help someone who won't help themselves, and I recall from my own time overseeing a domestic violence calendar hearing attorneys defer to the autonomy of victims to justify releases or reductions for violent offenders. "Why would the victim stick with their abuser if they, too, didn't think they were capable of change?"

There's no shortage of reasons why, and it shouldn't be a victim's job to explain them.

I laud the work that's been done to reduce the burden on our overcrowded courts and prisons and recognize it as a truly just cause. But these releases should be matched with an abundance of funding for social service programs that prevent recidivism and protect victims. We're otherwise setting ourselves up to fail, at the cost of those who need our protection most.

It is especially important in criminal and family law case combinations to have appropriate child custody screenings and assessments, with solid facts to back them up.

Until legislators act, judges must do more to ensure violent potential reoffenders aren't receiving reduced sentences, particularly when it comes to making use of the probation department, and potentially other assets, in other divisions of the court, already at their disposal. I don't question that we have the ability to do better, the real question is do we have the will?

#364707

[Submit your own column for publication to Ben Armistead](#)