



70 Million S3E10 Annotated Transcript: Where the COVID-19 Pandemic Might Finally Ignite Change in the Bail Bonds System

When jails across the country began releasing thousands of people amid the COVID-19 outbreak earlier this year, and mass demonstrations against police brutality brought millions out of their homes, criminal reform advocates wondered if they'd finally see significant and lasting reform.

Journalist Renata Sago reports on two Florida jails that are having very different responses to the possibility of change

Mitzi Miller: 70 million adults in the United States have a criminal record. In Season Three, we'll explore how our rapidly changing reality is impacting those in custody, and the policies that keep them there. I'm Mitzi Miller.

COVID-19 is behind the swift shift in what's inarguably one the most pernicious criminal justice issues affecting people across this country...

Sound of Broward County Inmate Information System, "for charge and bond information for this inmate, say charges or press two."

Miller: ...Pretrial detention. This system has kept people sitting in custody for months, even years, without being convicted — often because they can't afford bail. In the United States, pretrial detention has kept nearly [half a million people](#) — presumed innocent — in custody every day.

Before the pandemic, [74 percent](#) of people in jails were not convicted of any crime. As early as mid-March, when it became clear that places where people were in close quarters could become virus hotspots, jails began to take [unprecedented steps](#). Including issuing pretrial releases to reduce jail populations.

Pilar Weiss: *We saw, you know, governors and state legislators, and mayors get a little bit of press here and there for announcing that they were gonna release a few hundred people here, a few thousand people here.*

Miller: Donations came in to bail funds to get people out of custody by the thousands. In part because of COVID-19 and also because of mass protests across the country.

Anthony Body: It made us ask the question, why couldn't you do this all along? Why couldn't it have been this way years before?

Miller: But would that momentum continue and turn into meaningful change? Renata Sago brings us a story from two South Florida jails, where change looks different for people in custody, based on their charges.

Renata Sago: Anthony Swain remembers his first encounter with the coronavirus. It was while watching TV inside the Metro West Detention Center —

Sound of [ABC News](#) theme song

Sago: — [Miami's largest jail](#). He sat in his wheelchair next to his cell mates and eyed the world map on the screen.

Anthony Swain: We saw what was going on in China and how they were recording and filming everything that was going on. And as we were watching the situation in China, we saw that it went from China to Italy.

Sago: Anthony was coming up on his fourth year in custody at Metro West. Back in 2016 he went in for racketeering and conspiracy to traffic drugs. A judge set his bond at \$1.1 million. He says he didn't commit those crimes. He hired a private attorney.

Swain: We went before the judge to try to get the bond lowered or for other ways that I could actually get out. And every way that we attempted was knocked down.

Sago: Anthony's time at Metro West had been rocky. Partly because of the charges, but also because of his health. He was paralyzed from the waist down for more than 20 years. His condition required bi-weekly medical visits. But the closest he says he could get to that while in custody was a bed in an ADL unit. That's a cell block for people who need assistance with daily living activities.

Swain: The same catheter that I used — that I went to jail with — I was using that same catheter for a year. I was sleeping on a mattress. I wind up getting a bed sore. I wind up slipping and falling in February 2017. And when I slipped and fall, I, at the time, I didn't know that my wrist was broken. I didn't get to the hospital until February 2018.

Sound transitions into news anchor voice:

[News Anchor:](#) Governor Ron DeSantis has declared a public health emergency after two people here in Florida have tested positive for the coronavirus. But the Governor...

Sago: On record, no one at Metro West had the virus in early March when it reached Florida. But Maya Ragsdale and other community organizers expected that would soon change. Maya is a community lawyer for the [Miami Dream Defenders](#), a grassroots organization. Maya had started hearing complaints from people in custody. People were saying things like:

Maya Ragsdale: We don't have masks. We sleep two feet away from the next person. We don't have soap. We don't have the very basic things that you guys on the outside are being told to do in order to keep yourselves safe.

Sago: For years, the Dream Defenders had put pressure on law enforcement and politicians to release people in pretrial detention. In the first weeks of March, Maya and other organizers went into overdrive. They contacted commissioners and anyone able to get elderly and medically vulnerable people out of custody.

Ragsdale: I would say we were pretty unsuccessful — at the beginning.

Sago: Around that time, some jails and prisons outside of Florida had started letting people out with lesser charges out. [New York City](#) released 23 low-risk re-offenders from Rikers Island. And a couple hundred more soon after. New Jersey released 1,000 people on house arrest. California vowed to let out [3,500 people](#) from prisons.

But Florida was quiet. [Public officials](#) hadn't announced if people in custody would be released. At Metro West, officials were still not sharing with the public what was happening inside the jail.

Music

Sago: Anthony remembers when his cellmate told him he was having symptoms.

Swain: Michael was like, "Hey Ant, don't come near me because I'm feeling real bad. And whatever I have, I don't want you to get it. I feel like this just happened to me just overnight." So I listened to him. The doctors wound up taking them out of our ADL cell.

Sago: Anthony didn't see Michael again after that. Later, he says, he saw officers enter a neighboring cell wearing hazmat suits.

Swain: *Now inmates are sending letters and everything up under the door to our unit, letting us know we need to be careful because next door have COVID-19 and they're not segregated or moving the individuals out. One inmate wind up turning into 10 inmates, 10 inmates wound up turning into 12 inmates. Now we have a pandemic going on that's right next door to our unit.*

Sago: Anthony says the jail was not sharing news with people in custody about the rate of active COVID-19 cases there. In a phone call with 70 Million, a spokesperson for Miami Dade Corrections said the jail had been updating staff and people in custody about its response to the virus since mid-March. The spokesperson also said he couldn't confirm Anthony's account for, quote, "security reasons."

But the Dream Defenders continued to hear concerns from people stuck inside Metro West.

Ragsdale: *What we ended up doing is deciding, you know, in order to bring light to the violations and the kind of cruelty that people were dealing with inside, we were going to file a lawsuit.*

Sago: The Dream Defenders joined the ACLU of Florida Greater Miami Chapter to file a class action complaint against Miami Dade Department of Corrections. Their complaint said the jail had become "a petri dish for viral infection." It called for the mass release of people like Anthony with health conditions that can make them even more [vulnerable](#) to the virus. That was on April 5th — about two weeks after the Centers for Disease Control published its first guidance for how jails should handle the [virus](#).

Ragsdale: *We had hoped that this lawsuit would result in kind of a mass release of people.*

Sago: The court responded two days later. Instead of a mass release, the court ordered Metro West to take better steps to prevent the spread of COVID-19 inside the jail. Metro West soon began tracking its own weekly numbers of active cases and publishing on [Twitter](#) and Facebook.

For Maya and other advocates, that was not enough. They wanted Metro West to release Anthony and other medically vulnerable people. They insisted that inside the facility people were unable to stay six-feet apart or adhere to other public health recommendations to prevent contracting the virus. The federal court delivered a response at the end of April.

Ragsdale: The judge said, you know, "my hands are tied. This is a state court issue. I don't want to deal with this, the federal court level, the state courts already letting people out as much as they can," and all this stuff. She kind of just punted it to the state courts. Said, "I'm not releasing anybody."

Music

Sago: A week later, the court responded. It ordered Metro West to continue to treat people in custody and track its COVID-19 cases. Within days, Anthony became one of those cases.

Music

Sago: Maya filed an emergency motion asking for the court to release Anthony.

Ragsdale: We were telling the judge, he is in, you know, he basically like he got transferred from the hospital to like this tiny little cell that could, he had no support for his disability when he was in there. There was no way for him to use the bathroom, no way to use the shower. Just like the absolute bare minimums he couldn't do.

Sago: The judge denied the request. The fastest way for Anthony to get out was to pay bail. He'd been able to get it lowered from \$1.1 million to about \$650,000. He would need ten percent of that to get out. Maya decided they would start a GoFundMe campaign. The Dream Defenders partnered with a public defender advocacy organization called [Zealous](#) to have a professional actor read Anthony's sworn [statement](#) describing what he was going through.

Actor: This place is a petri dish. This one individual came in with a temperature of 103 degrees. It took corrections [almost a week](#) to send him to the hospital...

Sago: His story went viral. Money came in from across the country.

Ragsdale: I think it ended up being close to [2,000 individual donors](#). People donating from \$5 all the way up to literally \$15,000.

Sago: The fund raised \$85,000. One woman donated \$25 and wrote, "I have minimum funds due to legal representation; however, I donated because I am the mother of a 26-year-old paraplegic male."

Nearly three months after Covid-19 hit Florida, Anthony was released from Metro West. Although he made bail, he was put on what's called total lockdown — he can only leave his home for medical visits. This is the closest to freedom he'd been in over four years.

Swain: I'm inside my own house. I can say that I get fresh air. I can say I don't have to wake up to a headcount.

Sago: He means being counted by guards. Donations to bail funds helped release thousands of people like Anthony from jails across the country where the virus was running rampant. The [Bail Project](#), an organization working in fourteen states, raised enough money to bail out hundreds of people from Cook County jail in Chicago. That facility had a [deadly COVID-19](#) outbreak in April.

Sound of protesters at George Floyd protest

Protesters: I can't breathe!

News Anchor: By the afternoon, nearly everybody had seen the video.

Speaker 1: I was mortified. I couldn't sleep.

Speaker 2: It's sickening, sickening.

Sago: Nationally, the momentum to get people out of custody was growing. Especially after the killing of George Floyd by a police officer in May. Thirty million dollars poured into the [Minnesota Freedom Fund](#). National Bail Out, a group committed to releasing Black mothers and caregivers from custody, received widespread support for its [FreeBlackMamas campaign](#). Pilar Weiss with the [National Bail Fund Network](#). She estimates organizations brought in \$75 million in the weeks following mass protests across the country.

Weiss: We saw this attention, I think, and connection being made where people started donating to bail funds, understanding that people were protesting police violence, protesting mass incarceration, and then being, you know, subjected to police violence themselves and so, and being arrested.

Sago: For Pilar, the pandemic — and the mass protests in the midst of it — helped bring into focus what she and other criminal justice reform advocates have been arguing for years: that the U.S. carceral system is made up of layers of institutional oppression. And that raising money for bail could only shift the system a small bit. Since the start of the pandemic, Pilar says her network has only been able to release a small group of people compared to those actually in custody.

Weiss: *In sort of popular culture and in sort of broad media coverage, often the issue is covered as, “end money bail or cash bail.” Like, that’s the focus. But actually most organizers working in this space and particularly community bail and bond funds, are advocating for an end to pretrial detention because they understand that money bail is only one part of it.*

Sago: There are many people in pretrial custody for long periods of time with charges that carry no bond. This means that no matter how much money they have or can raise, pretrial release is only possible if the state can’t establish proof of guilt is evident or the presumption great.

So defendants rely on judges to determine if and when they can be released pretrial. Often, people who don’t have a bond are because they’re facing a capital felony or an offense punishable by life in prison, like homicide or armed kidnapping. A bond can also [be revoked](#) for violating the terms of release and for probation violations. This can include missing a court date.

There’s no statewide data tracking of no-bond charges. As of late October, Miami-Dade Corrections hadn’t confirmed its figure, but next door, in Broward County, 77 percent of people in jails carried no bond charges. That’s high compared to a [2017 Analysis by the ACLU of Florida](#) which found that 30 percent of people at the Escambia Jail, in Northern Florida, were held on no-bond charges.

Sago: *I’m really interested in this issue of no bond. I mean, some people are in there on charges where they, you know, one charge might have a bail amount and then the other doesn’t and then they’re just stuck in there.*

Shima Baughman: It’s unusual and it should be.

Sago: [Shima Baughman](#) is a law professor at the University of Utah. For about a decade, she has been researching pretrial detention in the United States.

Baughman: So constitutionally every defendant should have the right to release before trial. It’s part of a due process right, as well as the presumption of innocence that all defendants from the beginning of the Magna Carta to the founding of the United States have always had. So it’s unusual to have a no-bond determination for somebody. It’s basically saying we’re detaining you. We’re not giving you any ability to have the right to release.

Dwayne Simon: My life is at risk in here.

Sago: Dwayne Simon is in the visitation area of the Joseph V. Conte Facility in Broward County. He’s holding the phone close to his ear. We’re talking

through an app and our connection is shaky. Dwayne tells me his nerves are bad these days.

Simon: The bed that I'm lying on, in the cell that I'm in now, somebody told me — he said the person that was there before me — had a worst case of COVID. So yesterday I really sanitized the mat down. I had somebody come and bring some antiseptic spray, things of that nature that would ease my feelings a little bit towards the situation, but at the end of the day not too much I could really do.

Sago: Dwayne's health has been declining since he entered custody at Conte in 2018. He used to take insulin pills for his diabetes. Now, he needs glasses and he has to take insulin shots. Dwayne's been afraid of what could happen to him ever since he heard that a nurse who cared for him died of COVID-19. Now, 70 Million contacted the health agency that works with the jail to confirm whether this was true, but we have not received a response yet. The sheriff's office says more than 160 staff across Broward County jails have tested positive for the virus. About 130 people in custody have also.

Simon: So, it's just the constant fear of the unknown.

Sago: Dwayne faces four charges. All of them carry a bond except one: a kidnapping he says he didn't do.

The charges are linked to one incident involving a woman whom, he says, he didn't know had a warrant out for her arrest. Even before the pandemic, Dwayne retained a private attorney to help get him out of custody. But he's only been able to afford part of the retainer fee.

Simon: I've seen people with worse situations than me. I've sat here and prayed for people with the worst situations than me, and they're home.

Sago: David Scharf says this is how the process goes for people in custody with serious charges. David's been with the Broward County Sheriff's Office since 2010. He oversees pretrial services for the agency.

David Scharf: Oftentimes you hear that in public and people think, well, they're just put in there to wait. No, that's not the case. There's mandatory motions and hearings and things that go along with the process to assure that due process is upheld and that these folks have an opportunity to present their case, that they can be released safely into the community. But again that decision lies solely with the discretion of the court.

Sago: How courts make those decisions varies by judge and jurisdiction. More jurisdictions are looking to [replace money bail](#) with other alternatives including

risk assessments to help determine if an individual should be granted pretrial release, and under what terms.

In Broward County, David's team uses a [risk assessment](#) to determine whether a defendant is likely to appear in court if they're released. The risk assessment evaluates factors like prior convictions, education level, and financial stability.

Each factor is scored. That data then is supposed to inform judges decisions in pretrial hearings. But how each judge uses that data varies.

Scharf: Having information in front of you, not always gives you the best results, but at least it lets the judges make a decision based on science.

Sago: The particular risk assessment tool that David and his team use has been identified as having serious scientific limitations. In [a report](#) from 2009, researchers found that its assessment was based on a sample size that did not reflect the accurate proportion of certain groups in custody: primarily women, Latinos and sex offenders.

The Broward County Sheriff's Office doesn't do risk assessments for people like Dwayne who are facing serious charges. According to data from the jail, the percentage of people with no bond charges at Joseph Conte has actually gone up about 13 percent between March and October.

Not every jurisdiction across the country uses risk assessments. The National Association of Pretrial Services Agencies, or [NAPSA](#) — says these assessments should be used for every defendant. Jim Sawyer heads the organization.

Jim Sawyer: It's an in or out decision. Are you staying in custody or are you out of custody, pretrial? And then if you're out of custody, what conditions do I want to put on your release? Do you need to check in once a week with your pretrial officer? Do you need to have drug testing? Do you need to be seen by a mental health specialist?

Sago: In March, before shelter in place orders across the country went into effect, NAPSA released a [guide](#) detailing its policy recommendations and arguments for, quote, "an effective, legal, and evidence-based bail system." It includes standards like maximizing pretrial release for bail eligible defendants, eliminating money bail and limiting pretrial detention to defendants that the court finds pose a violent risk to the community. Now in June, NAPSA surveyed pretrial agencies across the country asking how they were responding to the pandemic. Most agencies said they'd increased pretrial release.

- Sawyer: We didn't see negative results around reporting to court, being accountable to court or new criminal activity or public safety issues. If we can realize all of that then why can't we just continue to operationalize all these changes during, during normal times, whatever normal is gonna look like.*
- Sago: Up until now, we've seen some changes in how states handle pretrial. [New Jersey](#) has nearly eliminated money bail. In [Nevada](#), [Texas](#), and [Massachusetts](#), bills calling for an end to money bail or providing risk assessment tools to judges have advanced. Jim Sawyer believes what's become clear is that agencies that *do* use risk assessments just can't take them at face value.
- Sawyer: What you also need to do is you need to validate that risk assessment against your local data. So you're determining, is that risk assessment really responding to what's happening in your community?*
- Sago: There are a variety of pretrial risk assessments. Some use a questionnaire, while others use what's called static data. That's information that does not change after being recorded. Some [risk assessment](#) creators are transparent about the inner workings of their models, while others guard them as proprietary.
- Pilar Weiss with the National Bail Fund Network says risk assessments perpetuate biases inherent in the criminal justice system.
- Weiss: They're often pushed by system players under this sort of guise that they're going to bring fairness and scientific equilibrium to the decision making process when they're actually, you know, they're incredibly fickle and they're built on racist data. So they do nothing but perpetuate it.*
- Sago: Shima Baughman published [research](#) last year that concluded that risk assessments have serious biases based on factors that assume people's criminality.
- Baughman: Even the ones that are touted to be the most promising discriminate on the basis of race, socioeconomic status. Another problematic thing is often they treat a prior felony conviction the same as a prior misdemeanor conviction. So, for instance, you're charged with a traffic offense. And you have that conviction on your record, which, I think most people have some kind of traffic something that they've done in their history of their lives. And then you're treated the same as somebody who has a felony conviction for rape.*

Sago: She's also found that judges tend to make gut decisions about people — and that those gut decisions aren't always good. For people with no-bond charges in Broward County, local organizations have been the most reliable advocates.

Marq Mitchell: I need to log in here so that I can get on, on time.

Sago: Marq Mitchell is sitting at his kitchen table. This is where he's been spending most of his time since mid-March. In video visitations. With person after person in custody without bond. His client Benji has been in custody for four years awaiting trial.

Mitchell: Hey, how are you doing, Benji?

Benji: Hey. How you doing?

Mitchell: I'm good. I'm good, man. So what's going on? What has happened since the last time we had a conversation?

Sago: Before COVID-19 hit, Marq and his team would meet with clients in person to help with court orders for pretrial release. They'd assess clients' needs. Get in touch with their attorneys. Then, they'd help with finding housing and jobs. Now, the only way they're able to connect with people is through these video visitations. Back in April, Marq helped file an emergency motion for Benji to get released for his asthma.

Mitchell: How long have you been waiting on the court date?

Benji: This motion's been there since April for me to get out. I've seen inmates get out that didn't even...

Sago: Marq says since the start of the pandemic, court dates for people in custody have been harder to come by, especially for people with serious no-bond charges. These defendants could ask for a reconsideration of their charge, but then they'd need evidence showing they're not harmful to the community. And even with that, these kinds of proceedings have been hard to facilitate during the pandemic.

Marq says these video visitations are also therapy for clients, and help when there's no one around.

Mitchell: We're dealing with a gentleman who's been incarcerated in Broward for about three years, and he hasn't saw his attorney in the past two years. No one's communicated with him. He even tried to get rid of that attorney and have someone else appointed by the courts because he had not saw an attorney in two years. And the local judge rejected that request. So he's

someone who has not been convicted of a crime, he's maintained his innocence, and nevertheless he's remained in jail.

Sago: In March, Marq and his team began protesting about the conditions inside the jails. They also created a special hotline for people in custody to call and to report what they were dealing with. That hotline brought in calls from dozens of people. Marq's team went from working with roughly 30 clients on average to now communicating with about 180 people inside the jail. But keeping these video visitations going can be difficult. The jails have so much control over communication.

Mitchell: *We are operating completely at the mercy of them. They change the schedule. They'll cancel visitations. They even said our account was fraudulent because of the number of transactions on our account and shut the account down.*

Sago: In July, Marq said, of the clients he'd spoken with, only 12 had been tested for COVID-19. He says even before the pandemic, people wanted to get out of custody so badly that they'd take a plea during their hearing even if they had previously maintained their innocence. And things have gotten worse.

Sound of court hearing in Miami

Judge: *How do you wish to plead, guilty or not guilty?*

Defendant: *Not guilty.*

Judge: *Not guilty? You want to have a trial?*

Defendant: *I mean, no, not really, but I'm taking a plea.*

Judge: *If you're taking a plea, you've got to say either guilty or not guilty.*

Defendant: *Not, not, not guilty.*

Defense Attorney: *You can't take the plea if you say it's not guilty.*

Judge: *You can take a no contest plea as your best interest. If you choose to.*

Prosecutor: *Your honor, I would object to a no contest plea on this case, the aggravated battery I have substantial evidence that it did occur. I could prove this beyond a reasonable doubt at trial and the victim suffered significant injuries. She actually went into labor.*

Judge: *All right. Sir, if you're not willing to plead guilty on this, this plea is over, this deal —*

Defendant: I plead guilty.

Judge: Oh, okay. All right, then. I'm gonna accept your plea. I find you have freely, voluntarily...

Sago: That exchange took place during a hearing broadcast over Zoom in July that Marq and 70 Million attended. This is the nature of pretrial release work in the midst of a pandemic. Despite efforts in the spring to reduce the number of people in custody, hundreds of jails have actually seen population increases.¹ In Miami's largest jail — Metro West Detention Center — the number of people in custody did drop by about [2 percent](#) between March and October.

Criminal justice reform advocates I spoke to say pretrial releases at the start of the pandemic have created an illusion of progress.

Shima Baughman is convinced ending pretrial detention is key to ending mass incarceration. She says even modifying how people are charged can create system-wide change.

Baughman: Prosecutors are charging three offenses for instance, when they could charge one.

Sago: Some people believe real progress is creating a system that does not detain people, period. Pilar Weiss with the National Bail Fund Network says the system requires a complete overhaul.

Weiss: The alternatives need to be thought about, about complete reorientation and reinvestment of resources in our society, right? We need investment in housing, right? You need mental health care services, healthcare services, childcare, right. Jobs. All the things that are driving...if we look at what are the issues that people need assistance with, you know, none of these are gonna be solved with incarceration.

Music

Sago: This is the long-term vision. One that requires much more than the courts and jails.

In Miami Dade County, Anthony Swain is happy to be out of jail right now. He sits inside of his home, about a half hour away from the jail. He wears his ankle monitor. His siblings drop off groceries. He gets rides to his doctors' appointments every week. He watches television. And he's even learning to

¹ [Prison Policy says the numbers have actually INCREASED](#): "71% of the 668 jails we've been tracking saw **population increases** from May 1st to July 22nd, and 84 jails had more people incarcerated on July 22nd than they did in March".

use a new laptop. This is a life that's much different from back in mid-March when he first encountered COVID.

Swain: *It's no court for the rest of the year. I don't know when the trial is. They don't know when the trial is. I can actually look my judge in the eye when I do go to court or when I do, when I am on Zoom without being in orange and feel as though I am already free.*

Sago Over at the Joseph V. Conte Facility in the neighboring county, Dwayne Simon is praying for the same favor. He spends a lot of time praying for people in the jail. So much so that they've started to call him the preacher. Some days, he doesn't eat because he's afraid the food might make his diabetes worse. His sister died while he was in custody awaiting trial. He worries about his mother, who recently fell. To ease his mind, he writes poems. He says he's written more than 200 of them since entering custody in 2018. Dwayne reflects on unstable conditions, unrest, and corruption. His attorney says the earliest he could go before a judge to defend himself against his charges is in 2021. But that's just a guess.

Miller: Renata Sago reported this story. By the middle of October when we wrapped up production for this episode, trial courts were still closed in Miami Dade and Broward Counties with exceptions. Jails in both counties said they were treating COVID-19 cases internally. Commissioners in the larger county, Miami Dade, also met in June, in the midst of the virus outbreak, to consider a proposal to build a [\\$400 million jail](#). The new facility would provide new amenities to people in custody. Criminal justice reform advocates have said it is another way to continue mass incarceration. But the proposal would be a response to a mandate by the federal courts back in 2013 to upgrade the [south Florida jail](#).

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70 Million is made possible by a grant from the [Safety and Justice Challenge at the MacArthur Foundation](#).

70 Million is a production of [Lantigua Williams & Co](#). Season 3 was edited by Phyllis Fletcher and Laura Flynn. Cedric Wilson is our lead producer and sound

designer. Michael Aquino mixed this episode and contributed to sound design. Virginia Lora is our managing producer. Leslie Datsis is our marketing lead. Laura Tillman is our staff writer, and Michelle Baker is our photo editor. Sarah McClure is our lead fact-checker. Ryan Katz also contributed fact checking. Emma Forbes is our production assistant. Juleyka Lantigua-Williams is the creator and executive producer. I'm Mitzi Miller.

Citation: Sago, Renata. "Where the COVID-19 Pandemic Might Finally Ignite Change in the Bail Bonds System." *70 Million Podcast*, Lantigua Williams & Co., November 16, 2020.

70millionpod.com

Produced by:

