

Keynote

Speaker: Joseph Giarratano*

Julia Kosineski:

We're going to get started in another minute, if everyone could take their seats. Thank you everyone. Welcome and good evening to those of you who are just joining us. I have the honor and privilege of introducing our keynote speaker this evening. If any of you have seen me around school, or talked to me over the last few weeks, you've probably heard me talk about Joseph, Joe. And I am going to read my introduction of him just so that I don't leave anything out.

Joe Giarratano was found guilty and sentenced to death in 1979 in total. He spent 38 years incarcerated for a crime that he did not commit. Thirteen of those years were spent on death row. Because of Virginia's twenty-one-day rule saying no new evidence

* Joseph Giarratano was found guilty of the killing and rape of a daughter and the killing of her mother, and was sentenced to death in 1979. He spent 38 years incarcerated - 12 of which he spent on death row. Because of Virginia's "twenty-one-day rule" saying no new evidence can be admitted more than three weeks after a verdict is rendered, the court was not able to hear crucial evidence that was not originally presented including and new trial was thwarted: the driver's license of another man found at the scene, along with bloody boot prints, hair, fingerprints, and sperm that did not match Giarratano. Fortunately for Giarratano, Virginia Governor L. Douglas Wilder granted Giarratano a conditional pardon based on the DNA and forensic evidence and changed his sentence from death to life with recommendation for a new trial - making him eligible for parole after serving 25 years. Joseph Giarratano was finally paroled from prison in November 2017. In prison, the uneducated Giarratano taught himself the law and advocated for fellow prisoners by securing representation for Earl Washington Jr., another death row inmate, who was eventually exonerated by DNA evidence. He participated in his own litigation and at the United States Supreme Court in the case *Murray v. Giarratano*, 492 U.S. 1 (1989), where the Court held there is no Constitutional right to appointed counsel in habeas proceedings for capital defendants. Giarratano has become noted as a legal scholar, published in the *Yale Law Journal* and elsewhere.

may be admitted more than three weeks after a verdict is rendered, the court was not able to hear crucial evidence that was not originally presented, including the driver's license of another man found at the scene.

Along with bloody boot prints that did not match Joe's, hair that did not match Joe's, fingerprints that did not match Joe's, and sperm that did not match Joe.. Fortunately for Joe, Virginia's Governor, Douglas Wilder, granted Joe Giarratano a conditional pardon (with a recommendation for new trial) based on the DNA and forensic evidence, and changed his sentence from death to life, making him eligible for parole after serving twenty-five years.

Joe Giarratano was finally pulled from prison in December, 2017; just last year. I've had the privilege of getting to know Joe and his wife Denise, and I'm really excited for him to share his story with you this evening. So please give a warm welcome for Joe Giarratano.

Joseph Giarratano:

Thank you everyone. I appreciate the invite to come up here to speak to you. Julia mentioned the twenty-one-day rule in Virginia. In my case, when the new evidence came to light, the Attorney General in the state of Virginia, at that time said, "Evidence of innocence is irrelevant under Virginia procedural law."

She argued that in the court system, and she argued that in the press. She was soundly condemned in the press across the country, with the press saying, "Mary Sue Terry may be legally correct, but she's morally wrong." In the court system, the courts agreed that they would not look past the twenty-one-day rule.

Had the evidence come to light on day twenty, I would've been set free a long time ago. To this day, the twenty-one-day rule still exists in Virginia. We were able to carve out one exception for DNA, but the standard for review under a writ of actual innocence, is that the evidence had to exist at the time of the trial and could not have been found by the exercise of due diligence.

The catch twenty-two is that, when a new attorney comes in years later, finds the DNA evidence or whatever evidence they want to raise, the courts in Virginia now rule that, "Well, this attorney found it, your trial attorney could've found it," and they bar the evidence from coming in. Even in DNA cases.

We just recently had a case where we had the DNA evidence, and the courts said, "Sorry, your attorney could've found it." We're working to get the man out on parole. He's been locked up since 1973. The DNA evidence excludes him. Hopefully the governor will pardon him, but that's a political process, as it was in my case.

But, I was wondering where all the prosecutors went off to. I have nothing against prosecutors, especially the young, aspiring. We talk about the evidence; direct evidence, circumstantial evidence. All of that's good. The problem isn't so much with the evidence, the problem lies where it always does: with the ethics and the personal beliefs of the people charged with upholding our criminal justice system.

Whether it is the defense attorneys, or prosecutors, that manipulate the evidence to prove their cases. Defense attorneys do it and prosecutors do it. Not all, but we have a lot of wrongful convictions. More than we know. The justice department has basically said, maybe one in every 100 prisoners is possibly innocent.

You've got 2.5 million people locked up. That's a lot of potentially innocent people. Most of those people do not have attorneys, nor the resources to pursue their cases. I didn't have it. I was lucky that young attorneys and big firms fought with their firms to take my case, and the firms put up the money. Millions of dollars over the years, to get me here today.

I have still not been fully exonerated. Governor Wilder commuted my sentence to life with parole and recommended a new trial, but I was denied the new trial because of the twenty-one-day rule. We found the DNA evidence in my case, moved to have it tested, only to be informed that it mysteriously vanished. The lab said they can't find it, that it was somehow lost.

But what we do know is, the bloody footprints, the fingerprints, dead hairs, pubic hairs, and the semen that was found at the time, did not match me under the traditional testing. And based on that, the governor commuted my sentence to life with parole, which was unusual. Because commuted death sentences, by statute, become natural life sentences, and because parole in Virginia was abolished in 1995.

So, there is no parole in Virginia. So, I'm here mainly to encourage and educate people. Set aside ... we know wrongful convictions occur. DNA has been a double-edged sword for

prosecutors. Originally when DNA was coming to light, the prosecutors were pushing it as a strong tool, which it is. The defense attorneys opposed it, the courts eventually accepted the science. It's good science.

The argument I hear from people is, with every exoneration it proves that the system worked. That's disingenuous. It doesn't prove that the system worked, because each of those exonerees had a trial. There was an investigation, they were tried, convicted, sentenced, and went through the entire range of appeals both state and federal post-conviction appeals. And those convictions were upheld.

Yet, they were innocent. How does that happen? It didn't happen because of the science. It happened because defense attorneys didn't do their jobs. Prosecutors or the police withheld evidence. There was faulty eye witness testimony. One of the prosecutors talked about finding a pubic hair and how that hair matched the perpetrator based on hair comparison (not DNA) . We now know that was junk science.

Unless there was a follicle that could be DNA tested, it could've been anybody's hair. There's no way to put a particular hair on a particular person's head or body. Same thing with the cell phones, when you're talking about pinging the cell phones. Well, the cell phone, that science doesn't put a person there. It puts a phone there. How many times has somebody left her cell phone somewhere? Yeah, mine was riding around in a car for two weeks. Couldn't find it. I dropped it into somebody's car and it fell behind the seat.

So the person driving that car commits a crime, it gets pinged back to my phone. It doesn't put me there. There has to be something else. That's not to say that the science isn't any good. It is good, but it has to be used correctly. The people that are charged with finding the truth have to maintain that ideal. It's not about getting a conviction. It's not about getting somebody off; it's about finding the truth.

And if we do that, nine times out of 10 or even more, we're going to get it right. But even in the cases where we don't necessarily get it right, we have to admit when the evidence is not there, that we make mistakes. We're fallible. You know, our systems are good, our judicial system is good, but it is a human endeavor and we're fallible. We make mistakes, and sometimes we don't like to admit it.

I worked on a case of a man named Earl Washington. Mentally retarded black man came to death row for a murder and rape. He couldn't read or write. He comes to me with a letter from the attorney general's office and the letter basically said, "If you file your Habeas Corpus petition in two weeks, we will agree to a stay of execution. If you don't, we're going to push for your execution."

In Virginia, as in most states, you don't have a right to an attorney in your post-conviction appeals. What was this man supposed to do? He couldn't even read the letter, but to this day it took us 18 years to get him out of prison. We got him some compensation, which was a good thing.

But, to this day, the police officers, and the judge in that case, and the prosecutor, maintained that this man was guilty in spite of the evidence. These police officers are still investigating cases. The judge is still trying cases, and the prosecutor is still prosecuting cases. That bothers me. For them to say Earl is guilty ... And you know, there is no doubt that Earl is innocent.

They ran the DNA through the data bank, found the guy that did it. He was in prison, he had committed several other rapes. But the prosecutor, to this day, hasn't prosecuted him for those crimes. He still maintains that Earl is guilty. That says something about us. It says a lot about him. So, the science is good. But we have to look at ourselves.

And anybody in here that wants to become a lawyer, whether you're a prosecutor, a defense attorney, or become a judge, you have to have those core beliefs. Our constitution isn't a technicality. It's about who we are as a society and what kind of society that we aspire to be. I'm here today because of people like Jonathan Gradess.

And some other attorneys, very good attorneys, who spent hundreds of thousands of dollars, and didn't ask for a penny back. I had five execution dates. I actually sat in the electric chair and got up out of it. And I've lost 38 people I was on death row with, or 39 people, 37 of them were executed. Some were guilty, most of them were guilty. I believe at least two were not. And I know for a fact that Earl Washington was not. And I know for a fact that I wasn't.

We have to maintain our safeguards. And we can't go too far to the left or too far to the right, we have to be honest about the

facts that we see in front of us. And when the facts tell us something isn't right, we don't hide that, as they did in my case.

In my case, what the police did. Before my first appeal, my first direct appeal was decided. They destroyed most of the evidence in my case. In 2004 we had the officer on the stand and he said, "No, I never destroyed the evidence," but we had the records.

He signed it out. Said exactly what he did with it. But, he said he couldn't remember doing that. From the prosecutorial side of the case, that was a big mistake. Had my case been overturned on that direct appeal, the evidence is gone. They don't have a case against me in that case. And, if I'd had been guilty, I'd have gotten off. In every case where there was an exoneration, there was a person on the streets who committed that crime. And, we know in several of those cases, those people went on to commit more crimes. They rape, they rob, they killed.

So, when prosecutors and police don't do their jobs vigilantly, guilty people get away, innocent people go to prison. I don't paint with a broad brush on every prosecutor. It's not every prosecutor, it's not every cop, it's not every defense attorney, but it happens too much. And, as professionals in those fields, they need to police themselves. But, we on the outside have to police them as well. We can't have that kind of secrecy going on. There has to be measures in place and I don't know what they are. I know I spent thirty-eight-years in prison for something I didn't do.

And, I have managed well, but I see that my responsibility now is to come and talk to people. But, I also work for the Innocence Project, the same people that worked on my case. And, I look at these cases, I'm reading these applications, I've got eight-hundred clients basically. And, I have to sort through these cases and it's hard. When a person claims they're innocent, I try to err on their side of it. But, at the same time, what I've learned is that not everybody in prison says they're innocent, but there are a lot of people who say they are, and they aren't. And, I've had to reject a lot of cases. But, it is a myth. Not everybody says they're innocent. Most of the guys I knew in prison will tell you, "I'm guilty."

So, it's a hard job for prosecutors, defense attorneys, judges. We have to support them, but we also have to hold them accountable. I used to be a fan of saying that there should be criminal liability for prosecutors when they do stuff like that. That's a tough call to make. I don't think that's the right solution.

But, the flip side of that is, if a prosecutor violates the warrant clause, seizes evidence illegally, the courts, generally, will throw evidence out. That person could have been guilty. That's not the solution either. There has to be some kind of middle ground, but prosecutors have to be held accountable when they do stuff like that. Police officers have to be accountable. And, it's scary.

For a long time, I was angry. I had to get past the anger. And, I've pretty much resolved that because admittedly I was a criminal before I went to prison. I grew up in a crime family. My mother ran one of the largest drug smuggling operations on the east coast from 1969 to 1983. My father was a made man in the Gambino family. I grew up in crime. I was a drug addict by the time I was age eleven. My mother was my drug dealer. And, I got away with a lot of stuff. So, I had to chalk it up as karma. The universe put me where I needed to be to get my act together. A tough lesson to learn and a hard lesson to learn. But I did it. I'm here today. Proud to be here. I like who I am today.

And, I'm committed to doing what I can as a citizen and as a human being to make our system work as best we can make it work, and not be a reactionary. Like this morning when I was talking to some law students, most of them who know my story, the first question I asked them "Well, does anybody in here want to be a prosecutor?" And I'm like, "No. Raise your hand and raise it high because we need good prosecutors. We need good defense attorneys. We need good politicians. We need good judges." But, before all that, we need to be good people and we have to mind our own way to do that.

There's really not a whole lot more I can say about that, but what I'd like to do is take questions, if anybody has questions. Anything you wanted to know about prison, but were afraid to ask, now's the time to ask him.

Audience Question:

I had the good fortune to spend a few moments with you earlier today and was fascinated by how many times the legal system let you down. So, I was hoping you might share with the larger audience about your defense attorney. I think it would help us to hear what the prosecution knew and didn't know in terms of your case. How the twenty-one-day rule affected you. I mean, if there's anything we ought to fix it's the twenty-one-day rule. I mean, my God. But, I'd love if you could personalize, particularly for the

people here who are going to be lawyers, about what happened with your defense attorney and what happened with the prosecutor, if you don't mind?

Joseph Giarratano:

My defense attorney had just left the prosecutor's office to become a defense attorney. The prosecutor on my case was his boss. I had a capital murder trial that lasted four and a half hours, including the lunch break. I was highly sedated. They pumped me full of Thorazine, close to 1900 milligrams of Thorazine from the time of my arrest to the time of my trial. The judge actually stopped the trial and said, "This man is on drugs. Find out where he's getting those drugs." Both the prosecutor and my attorney stood up and said, "No, your honor. He's under psychiatric care. Everything's fine."

My defense attorney did no investigation in the case. There were five police written confessions. All of them were different. All of them were wrong. The judge said that he had a problem with the confessions. He said that they didn't make any sense to him. And then said, "Well, if he's not saying he's not guilty in my courtroom today, then I guess he's guilty." And, I was sentenced to death shortly thereafter, within a month.

In my second appeal, where we could raise the issue of ineffective assistance of counsel. New attorneys had come in. They found a whole wealth of errors. They raised every ineffective assistance of counsel claim that you could imagine, and all of them were valid, and the court said they were valid, but dismissed for one reason. They dismissed them all as being procedurally barred because my attorney did not make a single objection at trial. Under Virginia's contemporaneous objection rule, if you don't object to it at trial, then file a post-trial motion detailing everything, you can't raise those issues on appeal.

We had a hearing before the trial judge on habeas corpus, and my lawyers asked my attorney why he didn't object to certain issues. Issues that were brought to his attention by a professor at UVA Law School during the time of trial. And, my attorney said he did not want to upset the judge. And, the judge denied my petition for habeas corpus, said the issues were procedurally barred because my attorney made a strategic decision not to object, which was grounds to dismiss my appeal.

We went from there to the federal habeas corpus, and the federal rules. Under the federal rules, if the state courts rely on a procedural rule without reaching the merits of the case, just dismiss the case on the procedural rules, the federal court says they have to honor that. My case went all way up to the Supreme Court and the Supreme Court agreed. They actually said in the case just before mine, in a Florida case where the prosecution or the state was applying their procedural rules in some cases and not others, a federal judge said, "Well, since you're using your discretion, I can use mine." And, they overturned that case. When the case went up to the Supreme Court, the Supreme Court advised Florida. They said, "If you want to have your procedural rules respected, you need to do like Virginia does. Never wave them, stick by your guns, and we won't meddle in your cases."

So, I think the other lesson there is that our systems not infallible. Procedural default. Every judge that reviewed my case said, "Yes, these issues have merit. There were constitutional violations here, but because they were not raised at the proper time they're procedurally barred. We can't consider them." Dismiss my appeals and move me closer to the electric chair. Those are things that we have to fix.

And, I think that addressed some of your question except my defense attorneys and prosecutors. Three months after my trial the prosecutor became a judge. Six months later, my defense attorney became the head prosecutor back in his old office, and he was famous for one saying. "I had six death sentences. Five for the prosecution, one for the defense." That was his motto. Yes?

Audience Question:

When you're in prison, how did you maintain in solitary confinement, how did you make sure you stayed sane?

Joseph Giarratano:

Initially, I wasn't sane. It literally drove me crazy. They kept me drugged. I was fighting against the drugs. When I refused to take their drugs, they would come in, beat me down, chain me to a bed, hit me in the hip, and knock me out for three days. I'd get up and we do it all over again.

Eventually, new counsel got involved. They got a court order to stop the medications. I was found mentally incompetent to be

executed during one execution date because of the drugs. When they went into the records, they found records from the head psychiatrist for the entire Virginia Department of Corrections that said, "He's on death row. He's in a super maximum-security prison. They're going to execute him. These other drugs aren't working. Let's try hallucinogenics."

We went to court, got the drugs stopped. We found out during the course of that investigation that that particular psychiatrist had lost his license to practice in New York for experimenting with drugs on his free clinic patients. He came to work for the Virginia Department of Corrections. He didn't need a license. All he needed was a degree.

So, I wasn't sane for a long time. But, what brought my sanity around, once I was off the drugs, the fog was clearing. Some people, attorneys, a friend of Jonathan's and mine, Marie Deans, took an interest in me, started giving me books to read, and they put me to work. They said, "These guys don't have attorneys. They have execution days pending." They gave me a stack of law books and told me to study law and I began filing habeas corpus petitions, getting stays of execution, trying to recruit attorneys. At one time, I was representing 36 people on death row, drafting their petition, cert petitions, habeas petitions, motions for stays, motions for counsel which were always denied.

And, in Earl Washington's case, I filed the 1983 petition with the federal court that went all the way up to the US Supreme Court. And the Supreme Court ruled, four justices said, no, there's no right to counsel in death cases. Four justices said in this situation, there is a right to counsel. Justice Kennedy made a very Solomon-like decision. The only difference being he actually cut the baby in half and said that because Earl Washington was not executed and because he had an attorney at the last minute, he would not say that there was a constitutional right to counsel, but if Virginia or any other state executed somebody without counsel, he would vote the other way.

That case forced Virginia to write new statutes. They realized they couldn't execute somebody without an attorney. They wrote new statutes, and now the state appoints attorneys in capital cases, but not in non-capital cases. When that case went to trial, I had the attorney general on the witness stand and I asked the attorney general, I said, "What would have happened had I not filed this case?" And, the attorney general was clear. He said the

order of execution would have been carried out. Earl would have been executed, and he came within just a few days of being executed.

So, that's the realities that we deal with. You don't hear about that stuff. You read about it in law books, but the public doesn't hear much about it. So, because of those people taking an interest in me and focusing my attention and me coming face to face with my own mortality, asking all the big existential questions. I was a kid. I was twenty years old on death row. Had been a junkie and an alcoholic most of my life, and a criminal. And, here I am on death row for something I didn't do. And, I'm asking all these big existential questions. What the hell am I doing here? Who am I? What's my purpose? And, I had to struggle with those questions. I was suicidal at some point. Depressed.

But, what got me past it was focusing and taking on the responsibility of trying to make a difference. That's what I found my purpose in. But, it also came from my attorneys. Many of them who to this day remain my friends. And, one of my wardens, who remains my best friend to this day for over thirty years now. We would sit there and debate. We would talk about the books. And, I didn't have a high school education. I got a GED in 1973. So, I just hit the books, and through my brain damaged brain, somehow it clicked in my head and I understood the law pretty well and used it.

But, it was people taking an interest in caring and not buying into the hype that we're all demons on death row. And, that seems odd for an attorney to do. It's these guys took a personal interest in me and mentored me and smacked me in the back of the head when I'd do stuff wrong. And, they didn't cut me any slack. But, it was that humanness that that made the difference. Their caring. And, they cared, not because they believed I was innocent, they cared because me being a human being. They would have represented me if I'd had been guilty. They didn't want to see me die. And that's what made the difference for me.

And, some of you are going to find yourselves in those positions, dealing with your clients, your future clients. They're not just clients, they're people. They're human beings. And, you shouldn't shy away from that.

Audience Question:

Hi Joe. I also got to spend some time with you today, so I just wanted to say again, thank you for being here. You astound me. You're very inspiring and I'm very happy that we all got to hear you today and hear your story. I did have a question regarding at what point in time in your case the DNA evidence was discovered, and how long it took to actually to leave prison, to get you out.

Joseph Giarratano:

A very long time. It took almost 20 years when we discovered it. They kept saying there was no DNA evidence, and somehow my attorneys were able to file a case under a new law that allowed us to ask the state to identify, preserve, and test any DNA evidence that it had. And, when we filed that and did the search, we found records that the DNA evidence actually existed. The forensic examiner, the prosecution's own examiner, preserved the evidence for possible future testing in the lab. And, we traced it back to the lab and we asked for it. They came back and told us, "Well, we can't find it." And, they're still looking. I don't know if that answers your question. Back to your question, you asked about solitary confinement. I spent eight years in solitary confinement.

Audience Question:

Were there breaks, or straight through?

Joseph Giarratano:

Straight through. From 1998 to 2000... whatever it was. Eight years all together. Then there was one short break and I spent another five years. Not for any prisoner infractions. I didn't break any rules. Hadn't had an infraction in 25 years. But, for my legal work against the system, conditions, cases, standing up to the system, writing articles. I had a loud mouth in prison and had access to the outside so I could write stuff. I was transferred to a supermax prison in Utah because I clashed with the director of the Virginia Department of Corrections. Got to fly around the country on the governor's jet.

I went from supermax in Utah to Joliet, Illinois, and then Stateville prison, also in Joliet. And then, Virginia opened up its supermax in 1998, and I was one of the first prisoners they put it in there. Some of the guys that went with me when it opened in August of 1998 are still there in solitary confinement. Two of

them have lost their minds. I don't think they'll ever recover. And, the sad part of it is I don't know if they could ever be released from prison in the shape that they are. They have literally lost it.

And, that's another aspect of our prison system that we have to look at. The Supreme Court has taken some steps in the right direction, but it hasn't gone far enough. They don't call the prison in Virginia supermax anymore. Now, it's long term segregation. But, you got guys that are still... still the same cell. They come out one hour a day in a dog cage for recreation.

Audience Question:

Hi. First, I just wanted to just say that you are incredible. Just your entire soul is beautiful, and I'm very happy that you are out. So, my question would be for those of us in this room that are aspiring attorneys, and for those of us in here who are already attorneys, what is the biggest thing that happened during all of the misrepresentations and the mistakes that were made in your case? What do you think is the biggest piece that we could help fight against and change so that that doesn't happen to others?

Joseph Giarratano:

Well, I think, probably one of the first things we can do is get rid of the death penalty. We make too many mistakes and I think that's one crucial thing that we need to do. And, I think as attorneys and as citizens that we should battle our legislators to do that, to get rid of the death penalty because we can't fix those errors. And, to say that we haven't executed people who are innocent blinks at reality.

So, the other thing you can do is take an interest in our institutions. As attorneys you can go into institutions, look at them, see how they operate, talk to the guards, talk to the prisoners. They are our prisons. They're not a government prison. They are our prisons. We pay the taxpayer's dollars. And, our systems are failing us. We have too many people locked up at great expense. And, our prison systems aren't about rehabilitation. And, I don't like the term rehabilitation. I don't think we can rehabilitate anybody. If a person doesn't want to be rehabilitated, there's nothing you can do to make them rehabilitate. The best that our prison systems can do, we can create an environment that is conducive to self-reformation.

And, right now our prisons are basically predatory societies. I can walk into any prison in any state in the United States, go out on the yard, and get you any drugs that you want to get. Heroin, oxycodone, reefer, whenever you want, I can get it. And, sadly most of it comes in through correctional officers. They tend to be low paid. I knew guys that got their drugs from correctional officers. One of the biggest heroin dealers in the state of Virginia was getting the heroin in through correctional officers.

He also gave it up, stopped bringing heroin into the prison system due to a program I started, a non-profit program, in prison in 1996 called Peace Studies, Alternatives to Violence. And, judges, prison officials, churches were sending at risk youth into the prison to meet with us. It wasn't a Scared Straight program. And, I put this guy in charge of working with some of these kids. And, he came to me one day, he said, "Joe," he said, "the warden just called me in the office and thanked me for not bringing heroin into the prison system anymore." He said, "How the hell did he know that?" I said, "Well, he's got snitches on the yard. The heroin supply's dried up." And I said, "Well, why did you stop?" He said, "Well, I've been working with these kids and I felt like a hypocrite." So, he stopped. And, this was a guy who was never getting out of prison.

But, it was a program run by prisoners. They own the program. It was theirs. Prison officials were involved. We had prison officials on our board of directors. They had a vote just like anybody else had a vote. They could be out voted. But, it was, there are guys in prison, if given the opportunity, give them something valuable to do. Not just cognitive therapy programs that they go and just sit there. You have to give them something. You have to give them a purpose, a real purpose, and you do that... they're human beings. And, any human being can change. I've seen it. It happened countless of times.

But, by the same token, I had friends in prison. I had a good relationship with the chairman of the parole board, and some of the guys that I recommended were granted parole. And, these guys would come up to me and say, "Joe, man, you got this relationship with the parole board, recommended me for parole." And, I'd look at him and say, "No, can't do that." And, they'd get mad at first and they were looking at me, "Why not?" I said, "Well, I'm with you 24/7. I know what you're doing in the prison system. You can't hide from me." And they'd like, "Yeah, you're

right man. I'm just going to go back out there and sell drugs. That's the only thing I know."

But, people can change. They can change. But, we have to give them a reason to do it. We have to create an environment that is conducive to that. And, our prison system isn't that. Like I said, they've devolved into predatory societies where we feel like we have to protect ourselves in there. The guards aren't going to protect us. The gang violence has gotten out of control. It's a scary world.

I was stabbed in prison. A correctional officer put out word that I was an informant because I wouldn't cooperate with an investigation he was trying to do and I wound up getting stabbed. But, I mean, the guy that actually stabbed me thought he was stabbing somebody else. He said all white guys look alike. All white guys with long hair and a beard. But, that's our system. And, some people make it out of there. They get it right. But, most people don't. And, if we don't get it right there, we let people out, they just commit crimes again. And, that doesn't help any of us. Yes, John.

Jonathan Gradess:

You got out in December 2017, but in recent days, you've happened to find yourself back in jail. I wonder if you would be kind enough to tell people about that.

Joseph Giarratano:

A funny story happened to me on the way to Albany. Because of the way I was released, Virginia has a new way of dealing with people that they believe are innocent. They don't necessarily exonerate you at first. They put you out on parole. And, right now, I'm under conditions of parole. But, I wound up with a parole officer who doesn't like my attitude and he put me in group therapy. And, I got kicked out of group therapy because we couldn't come to terms on a treatment plan. They said, yes, I participated well, but I wasn't participating in my own treatment. And, my question was, how do you treat something that isn't broke? I've got my act together.

And so, they kicked me out of group. He had me arrested and threw me in jail. I spent twenty days in jail. But, this guy was micromanaging my life. Some of it had to do with cases that I had filed against the DOC and doing the work that I was doing. Told

me I couldn't have access to a computer anymore. I couldn't have any contact with convicted felons. And, I had to tell him. I said, "All my clients are in prison. They're convicted felons. I work for the Innocence Project." He said, "Well, you can't do that anymore." I said, "What am I supposed to do?" I said, "I only know two things. Working on the fishing boats. I can't do that anymore. Or, drug smuggling and I'm not going do that anymore." He said, "Well, get a job at Burger King." I said, "That's not happening."

But, I got kicked out of the group, wound up in jail, sitting in jail for twenty days. The parole board intervened. and said, "No, this is a crock. Let me out with new conditions of parole." And, I probably shouldn't say this out loud, but sort of spaded my parole officer and took away his discretion. And, I'm allowed to travel now and give speeches where he was interfering with that. I can go back to work. I can have contact with felons. And I just gave a talk, a fundraiser at the Innocence Project, and we just had two more guys released. That DNA clearly proved they were innocent, but instead of exonerating them, they put them out on parole. They have to get off parole before they can go back and file for a simple pardon.

It was a little rough and it was hard because I had just gotten married at the time I got arrested. I'd only been married five weeks. And, even the police officer that was taking me to the jail, he said, "What am I arresting you for?" And I said, "Well, I got kicked out of group therapy." And he said, "What?" He couldn't believe it. But, that's been my life since I've been out, and it almost kept me from coming here.

Julia Kosineski:

We have time for two more questions.

Audience Question:

You kind of briefly touched on it just now, but how has assimilating back into the community been? And, if it was challenging, what challenges did you face?

Joseph Giarratano:

For me, it wasn't as difficult as I thought it would be. I was in prison almost forty years and nobody leaves prison unscathed to some degree. Everybody is institutionalized. Some more than

others. But, you don't know how institutionalized you are until you're out in society. And, my first experience, I got out five days before Christmas, and somebody had the bright idea of taking me into Bed, Bath and Beyond. I go in, and it's not a lot of people in there. Everything's fine. And, I'm trying to figure out the aisles and which way to go and all this. And, I-

I'm trying to figure out the house, and which way to go and all this. And I turned around, and the place got flooded with people. And I froze and had a panic attack. I couldn't move. And said, "Get me the hell out of here." I had to go outside. And that was happening a lot. Going into restaurants, I kept having these panic attacks. But I kept pushing myself, doing it every day to desensitize myself to it.

I had advantages that other people didn't have. I had planned well in prison. I had a skill that I could use coming out. I had a job as soon as my feet hit the ground. I had saved some money. Most guys don't have that. They come out ... in Virginia up until just recently, when you left prison, they gave you twenty-five dollars and tell you to have a nice day. That's it. Twenty-five dollars and a bus ticket.

That's changed now. Now you have to ... if you have a prison job, they take so much out of your check up until \$1,000. But most guys coming out, guys that I helped make parole are coming out, they can't find housing. I was blessed to have friends who let me stay with them until I found my own place. But I'm trying to find housing for two guys that had just made parole. A blind guy that I won the ADA case for, that we just settled, gets out in February. He has nowhere to go. Halfway houses won't take him because he's blind. He can't sleep on my couch. My department's too small. So what's he going to do when he gets out? And he's coming out ... the prison's going to open the door and set him outside until ... same thing they do when they put him in there, they set him on the block and said, "Fend for yourself."

He couldn't even get ... I mean, he's completely blind. And they're going to put him right out the door. And they're depending on me and his attorney to find him someplace to stay. And you have a lot of people coming out like that. That's a rare example, somebody blind coming out like that, but ... For me now, the hardest thing is choices. For 40 years I couldn't make choices. And it seems silly. I can walk into a grocery store, and I can't make up my mind what to get. I can't. I'm in a restaurant

with my wife and friends, everybody's ordered, and I'm still looking at the menu. I have to ... somebody pick something. I can't make up my mind. My brain just locks. I get confronted with too many choices. I still haven't figured out how to get around that one.

But the other thing I learned when I went back to jail, I've got some pretty serious PTSD issues. When I went back in, it all came back. So, I'm getting my own therapist to help me with some of that stuff. But it hasn't ... I'm struggling. I'm living from paycheck to paycheck right now. Got to figure out what to do about taxes. I haven't filed taxes in my life. I mean, back in the old days, we just paid cash. There weren't any taxes involved, so I got to figure out what to do with stuff like that.

The technology. You think it's smarter than you? It's way smarter than me. I can't get it right. I had no computer skills when I came out. In prison, I never touched a computer. So I had to figure all that stuff out. And I'm still struggling with some of that, but my wife helps with it, and I've got some other friends. And I'm still talking to my phone, trying to convince it to work and do what I tell it to do. But those things are hard.

And employment. Like I said, most guys come out of prison, can't get employment. And I was blessed, I could go to work for the Innocence Project. I have a skill that they could use. But those are the two big issues for people coming out. We don't have good re-entry stuff for prisoners coming out. And if you don't deal with that ... I hear a guy say it in prison. "What are you going to do with your twenty-five dollars?" "I'm going to go buy me a bottle of wine, and Saturday Night Special, and do what I do best." They go right back into the same neighborhoods they came from. They're struggling.

Crime ... It's hard to generalize about crime because they're different individuals. A lot of factors play into it, but crime is a societal problem. We're never going to fix it by a prison system. We're going to have to deal with the issues of poverty, and racism, and all that stuff that goes on. And we have to address those issues. We have to really take a hard look at ourselves and address those issues. We have to think in terms of preventative medicine. It's going to be costly. That's always a big problem with legislatures. We know what works. I mean, we know exactly what works in prisons, and what works to keep people out of prison, but it's costly.

An example, in Virginia we have 36,000 prisoners. The prison budget is \$1.5 billion a year, and steadily growing. Parole has been abolished. You have an aging population. The legislatures, to pay for that, are cutting social services. And your re-entry programs are gone. We have to stop that. We have to deal with this on the front end, and on the back end. And we have to protect society. There are people that ... we need prisons. I'm not one of those people that think prisons need to be abolished. No, we need them. And some of my friends need to be in there, and not come out until they get it right. But for me, re-entry is ... because I've had so many friends and such support, it's been a little bit easier. But even I've had to struggle. I still get up four in the morning. Doesn't matter what time I go to sleep. I'm up at four in the morning. I've just been conditioned to it. I haven't been able to get out of it.

Joseph Giarratano:

So that's ... and I have come to realize, I do need some serious counseling because the PTSD has got me. Thank you for listening to me. Thank you.

Julia Kosineski:

Thank you, Joseph, for coming all the way from Virginia to share your story with us. We are so grateful, and inspired, and you really make the world a better place. Thank you.

Joseph Giarratano:

Thank you. Thanks for having me.