

**Incarceration**  
**Exploring the psychological effects of long-term confinement and how technology has impacted the current conditions of our prisons**

**Moderator:**

Professor Vincent Bonventre\*

**Panellists:** Sheriff Craig Apple, Kevin Cahill, Jonathan Gradess, Victor Pate, Doctor Ray Wickenheiser

Julia Kosineski:

Okay, we're going to get started. So welcome to our last panel for the Albany Law Journal of Science and Technologies Fall Symposium. This panel is on incarceration, and I am thrilled that we have five fabulous panellists here with us tonight. Professor Bonventre will be moderating our panel, professor at Albany Law School. We also have Sheriff Craig Apple, who is the sheriff of Albany County. Kevin Cahill, who is a psychologist at

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\* Professor Vincent Martin Bonventre is the Justice Robert H. Jackson Distinguished Professor at Albany Law School. He received his PhD in Government, specializing in public law, at University of Virginia; a JD from Brooklyn Law School; and a BS from Union College. Dr. Bonventre teaches, comments and advises on courts, judges, and various areas of public law. Those areas include the judicial process, the Supreme Court and the New York Court of Appeals, criminal law, and civil liberties. He has authored numerous works on those subjects. Prior to joining the Albany Law School faculty in 1990, he was a law clerk to Judges Matthew J. Jasen and Stewart F. Hancock, Jr. of New York's highest court, the Court of Appeals. Between those clerkships, he was selected by Chief Justice Warren Burger to serve as a Supreme Court Judicial Fellow. Previously, he served two tours in the U.S. Army—one in military intelligence and one as trial counsel in the JAG Corps. Dr. Bonventre is the author of *New York Court Watcher*, a blog devoted to research and commentary on the U.S. Supreme Court and the New York Court of Appeals. He is also the founder and Editor of *State Constitutional Commentary*, an annual publication of the Albany Law Review devoted to American state constitutional law, and he is the founder and Director of the Center for Judicial Process

Soldier On. Jonathan Gradess, who worked for the, and was head of, the New York State Public Defender's Association. Victor Pate, who is a campaign organizer at the New York Campaign for Alternatives to Isolated Confinement. And finally, Dr. Wickenheiser, from the New York State Police Crime Lab. Please join me in giving our panellists a round of applause.

Professor Vincent Bonventre:

Well, it was really pretty amazing to hear our keynote speaker, and I think that this panel is just a perfect follow up. I do want to thank our fantastic students who run the Science and Tech Journal, for putting together this absolutely terrific symposium. Thank you so much, you guys are really, really great. Really great.

In law school we actually study very, very little about incarceration and punishment. You know, maybe in our traditional courses, constitutional law and criminal law, we learn a little bit about the legally legitimate purposes for punishment: deterrence, incapacitation, a few other things. Maybe we also read some Supreme Court decisions about the meaning of cruel and unusual punishment, and therefore what particular punishments are prohibited, constitutionally.

We may also have read some opinions where some of the Justices insists that absolutely nothing is constitutionally prohibited except for crucifixion, burning at the stake, disembowelling, dismembering, and a few of those. You wouldn't be surprised that that would be Scalia, and Thomas, and a couple of the new ones. But fortunately, we have people who are much more enlightened than that, and we have several of them right here on our panel. So, without further ado, we'll begin with Sheriff Apple, who has a long career in law enforcement. And beyond that, he's responsible for promoting and instituting some really extraordinary reform. So, sheriff-

Sheriff Craig Apple<sup>†</sup>:

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<sup>†</sup> Craig D. Apple, Sr. became Sheriff of Albany County in 2011. He has served in the Albany County Sheriff's Office since 1987. His career began as a Correction Officer and he became a Deputy Sheriff in 1989, an Investigator in 1991, a Sergeant in 1993 and Lieutenant in 1995 when he was supervisor of the Criminal Investigations Unit. During his years of public service, as Sheriff of Albany County, he has implemented numerous programs at the Albany County

Thank you. Okay. All right, so first of all, thank you so much for the invitation. I get invited up here quite a few times a year to speak. Sometimes it's good, sometimes it's bad, so don't throw anything hard, just soft objects. So as professor said, my name's Craig Apple. I'm the sheriff here in Albany. I've been the sheriff since 2011, and I've got about thirty-two years in as a member of the sheriff's office. So, I've seen this agency completely go just about full circle. And I think it's actually a really good thing for us. We house a jail, I'll just keep it correction related. We house a correctional facility that will house one-thousand-and-forty people. Currently, as of this morning, our population's seven-hundred-and-twenty-seven. We also, within that seven-hundred-and-twenty-seven, have about two hundred immigrants that are being housed in Albany County. And we also have inmates from Rikers Island, Schoharie County, Jefferson County, Green County, and I believe a few from Schenectady County.

With a facility that large, we kind of had a horrible philosophy of making arrests back in the nineties when the crack cocaine phase hit us hard here in the capital district. And we went with the methodology of, if you build it, they will come. And they did. And when I left there; I used to work in that jail back in the mid-eighties. And when I left there, our population was five hundred. We housed three hundred-and-eighty-seven. We had a massive overcrowding issue. But there really were no alternatives to incarceration, there were no programs out there to push people through, to keep them, to lower that recidivism down.

And when you talk recidivism almost in any county jail, especially Albany County jail, it's around 45%. On the low end, you may get a 40 to 42%, but most county jails are 45%. Which means four out of ten people are just constantly coming back. So, what do we do to try to prevent some of that? And what we've done in the jail, one of my greatest programs that we started a few years back, and fortunately it's with my counterpart here on the panel, is started a Veteran's pod. We said, "You know what? We throw an AR-15 in these 18-year old's hands, we send them across the world to defend us, and they come home, and we leave them hanging." And a lot of them are suffering from PTSD,

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Correctional Facility, which include: (SHARP) Sheriff's Heroin Addiction Recovery Program, Soldier On and the Inmate Work Force which provides free labor to not for profits, while teaching inmates to be productive members of society..

domestic violence, drug addiction, alcohol addiction, whatever the case may be. And they end up in our facility.

So, I thought we could do better, and I partnered with Soldier On, I'm sure they will speak a little bit more about it, but we've got recidivism rate on that tier of 6%. All right, so basically what we do is we counsel them every day. He does. And then we help them, we mentor them, we show them how to get a job, we show them how to do an interview, things like that. We get them involved in transitional housing, and they don't come back. And that's really what it's about. Nobody wins when that recidivism is that 45%. You folks in here are paying \$66,000 a person, annually for every inmate that we have in New York state. And that's like a four-year old number. So, knowing the taxes in this state, it's probably \$70,000 now. So, nobody wins.

So, then we moved on. We're like, "Wow, we did a great job with Soldier On. Let's see what we can do with drug addiction." Opioid problem in this state is horrendous. People, we're losing lives every day. As we're sitting here, we're probably losing one within a couple miles from us. So, what can we do there?

So, we started out, and I won't give you all the mechanics of it, but we've got a great partnership with a local treatment facility that comes in every day. And they sit down and they counsel. And the same thing, we kind of mirrored it off of Soldier On. We just focus on addiction, and we use VIVITROL. And on there, we have a 12% recidivism rate. And now those fighting addiction usually have a 75% relapse rate. And when you're talking a 75% relapse rate, you can't imagine what the recidivism rate is. So, we're very proud of the number of 12.

So, if you take all of the boarders out of our facility, we're down to less than where it was in 1987, when I left that facility. And I'd like to credit that to a lot of the alternatives to incarceration, and giving people support. Now, if I was to ask every single person in this room, if you ever needed a hand, I would be shocked if nobody raised their hand. I don't really care what the situation is. Everybody needs support at some time. And a lot of these folks that are coming in there made a lapse in judgment, whatever the case may be, and we've got to be there to kind of help them, give them a little kick in the butt, build them back up, and get them out there, and check on them, and make sure everything's good.

And I think when they see that somebody really cares about them, somebody supports them, they don't come back. And that's really what it's about. And that's my view of the correction system. You know what? There are some bad people in the world. We do need prisons, we do need jails. But I also think there's a lot of people that we can keep from coming back. If you don't have a mom, if you don't have a dad, if you're coming from a dysfunctional family, and you've got no means of income, no mode of transportation, you usually go back to what you know, and you'll end up back in jail. So, if we can help those folks, we can keep the recidivism down, we can keep the jail populations down, and I think everybody wins when we do that.

We've got dozens and dozens of programs that have been nationally recognized, whether it's the inmates raising dogs, or the inmates, I got firefighters we're training in the jail. I mean, I'll try anything and everything to give somebody a sense of productivity, to keep them from coming back. We've got guys that are leaving the jail and they're going on to be volunteer firefighters. And we've got people that are going out there that are working for Callahan Construction out there. We've sent inmates out, we've got inmates leaving the facility with \$14,000 in their savings account, money that they've never thought they'd be able to save. Well we saved it for them while they were in there. And they did their time, they paid back their court fines and everything else, and now they can go and get an apartment. They can put security down on their apartment. They can lease a car, so they can go to their job. There's some marvellous things happening. It's happening locally, and a lot of it has been taken to different parts of the state, and we're really proud of what's going on in the county.

So that's just the real quick, quick synopsis of what's happening about five miles from here. So, thank you.

Professor Bonventre:

Now sheriff, I know you barely squeaked by the last election. Actually, he was unopposed. Nobody would even bother running against him. Do you think some of that is because your programs work so well, and so popular, or what?

Sheriff Apple:

Professor, I have a sleep problem. So, I usually-

Professor Bonventre:

A sleep problem?

Sheriff Apple:

Sleep problem. So, all I know is public safety is what I've done all my life. And the way I look at it is when you look at the cars, you see the cars, and protect and serve. I always tell everybody we've got the protecting down easy. It's the serving that we're working on. And some people had a hard time swallowing that. They're like, "That's not what we're supposed to do." And I mean, what I always tell everybody is, we're armed social service workers. And you know what? If you can help people, and maybe it's a matter of somebody that just needs a quick lift home, or somebody who fighting addiction and get them into treatment, whatever the case may be, that resonates. And I think that it's we've been able to change create that paradigm within the entire department to get people to help.

Now I've got officers calling to go and help people. And I think that's really what we're supposed to do. I mean, we've got our battles that we fight. But for the most part, we work hard in the department. I get criticized a little bit for not being a big "ticket" guy. And my thought on that is that listen, we should be out there pushing the education, the awareness. By issuing tickets every day to people that can't pay them, and that's what starts the cycle. They can't pay the ticket, the car gets suspended, they get stopped again, the car gets towed. The person can't get to work, he loses the job. So now we started that cycle. And when you get in that rut, it's very hard to dig out of that rut. So, we can keep people out of the rut, and keep moving them along, and things work out. And I think that's been our success.

Professor Bonventre:

Well, we're lucky to have you in this county, and thank you so much for coming today, sheriff.

Sheriff Apple:

Thank you.

Professor Bonventre:

Next, we have psychologist Kevin Cahill, and he's been providing services for quite some time for at risk, and actually homeless veterans. And also, to people with severe mental illness. Cahill. Kevin Cahill, please.

Doctor Kevin Cahill<sup>‡</sup>:

The one thing I learned sitting here is that need a new glasses prescription because I can't see any of you. So, the intimacy of a private session is not going to be achieved. I'm the chief clinician for Soldier On. For many years I was the only clinician at Soldier On. We operate two homeless shelters in Berkshire Count- or excuse me, one in Pittsfield, which houses about 70 individuals. We operate another facility, two building facility in Leeds, Northampton, Massachusetts on the VA property there, that houses about 150 individuals. Also, at our facility in Pittsfield, and in the property in Leeds, we've built about 40, 50 permanent housing units for veterans who buy a portion. They have an investment in those housing units. We also have permanent housing units built in Agawam, Massachusetts and in Chicopee, Massachusetts, and we're building a woman's facility for only women veterans in Pittsfield. Again, they will have an equity, so they will own part of these places.

Many years ago, the AFL-CIO wanted to help us build some of these facilities. And I remember going to the meeting, and they brought out these blueprints of 1000, 1200 square foot apartments, condos with two bedrooms, two baths, and full kitchens. And my only suggestion was that if homeless veterans could manage that, they wouldn't be homeless. And that talking to the veterans themselves about what they could use, and what they could manage was the actual, the real way that we could provide housing that would be safe, and housing that would be

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<sup>‡</sup> Kevin Cahill is the Vice President responsible for treatment at Soldier On Inc., where he has worked for 10 years. It is in that capacity that he does counseling to veteran inmates at the Albany County Correctional Facility. Soldier On Inc. is a non-profit agency that provides case management and other services to veterans, who are homeless, in danger of losing their housing, or incarcerated. It has programs in 5 states. Prior to that, Kevin Cahill was the Clinical Director of Meridian Associates for 30 years. Meridian Associates is an Agency in western Massachusetts which provides various services to individuals with severe mental illness. Kevin is a psychologist and completed his graduate work at the University of Massachusetts, University College Dublin, and Trinity College, Dublin.

permanent. And so that's what happened. And as a result, I know I'm off track, but as a result of that, the units now cover between seven, eight-hundred feet excuse me, square feet. I don't know much about mathematics, but anyway. So that's the average size of a unit that we have.

The units are important because many of these individuals had been homeless for years. I took a man off the streets in New Jersey who had been homeless for 35 years, and he had paranoid schizophrenia. And he was sleeping on the floor in the police station in the town, and the police contacted us to help treat him and to provide him with services, because people stopped coming into the police station to pay their tickets because of him.

And he was living on a tent in the center of the town, and the middle of the town had been taken over by a new business who had an investment in several stores, almost like a public mall. And they wanted all the homeless removed from the center of town, and they were removed from the center of town. And that's how he ended up on the floor of the police station.

Part of what the sheriff is talking about, our outreach programs that we have in New York state, in Connecticut, in Pennsylvania, and New Jersey, and I visit all these programs to help the staff deal with homeless veterans who are living in tents, living in their cars with their dogs, living on Boy Scout camps, in buildings associated with those entities. And they need to get out of those places fairly soon. So, we help find them housing. And we are able to support them and their families, I might add, for up to three months. So, we do that in all of those states.

A large part of my comments today though, will be about the veteran's pods. We have one, as the Sheriff mentioned, in Colonie, at the Albany Correctional Facility. We also have one in the Willard-Cybulski prison, in Summers, Connecticut, which has about a hundred people there. We also have one in the Central Mississippi Prison in Pearl, Mississippi, where another hundred veterans are treated there as well.

The philosophy behind this is not, is not a surprise; it's not something that we're unfamiliar with. And that is that veterans have a certain camaraderie that they will have attained while they were in the service and especially during its training period. And that if any of these veterans were involved in or deployed into combat situations, that that camaraderie or we would indeed

be cemented. And this is found, at least in my experience, to be largely true. It also coincides with a particular clinical development in our lives. Sure, the clinicians in this audience who are familiar with Mr. Ericson, who's from Stockbridge, and he, you know, invented the phases of life, a paradigm in which we based development judgments and developmental assessments. And in our twenties, we seek to provide for ourselves commitment, and relationships, and intimacy, and friendships, and to get to know people who will love us and take care of us, and who we will love and who will take care of ourselves. And, so for the veterans of both genders to be in the service together into the conditions which I describe the relationships developmentally, we'll also key in.

So, the comradery goes beyond the, you know, I still hang out with my, some of my high school friends, but that's a diagnosis. But these guys will essentially bond with each other for the rest of their lives. And we noticed this on the pods themselves because the pods are cleaner. In some of the prisons I work in, they have, they have adopted sort of military style rules. They all get up at the same time, they have a certain morning routine, you do calisthenics, they do what they associate it would be their military routine duties every day. And, so there's a camaraderie that works itself out in the services that they do to each other, into the union as a whole. And my belief is, is that the comradery among these individuals assists in their treatment; that it actually lowers and symptomology.

And I have to, my best example is something when I was doing my research for my Ph.D., which was in history of psychology, which didn't exist back then. But anyway, doctoral help and myself examined. We interviewed a lot of veterans, Irish veterans I hasten to add, from World War One. This was in the 70s many of them are so alive in the unique thing about Irish veterans was that they also fought in the Irish civil war, which was quite vicious. I'm sure some members of the Hibernian Club would know the story behind that, and many of them would start crying as I spoke with them. And I'm in my twenties not empathizing particularly well with what's going on. I certainly didn't know them, what I know now, but my point was what we discovered was that the incidents of what is now called PTSD and was war related trauma back then was less among the Irish than it was among the English. It appears at Oxford and Cambridge we're

discovering that. the World War One is famous for the amount of trauma that caused English troops, especially the officers and so what we, what my theory was and Union and agreed with me that the, when the English army was recruiting in Ireland, Ireland was still a colony then. When they recruited English troops into the forces, they basically separated individuals who are signing up on what you and I would be familiar with as the buddy system to ensure that they would be loyal to the flag and not to each other or to their communities. I'm sure you've heard of that. As far as the colonies were concerned, they really didn't pay attention to those kinds of details and they would enlist people en masse from the same towns. And, so a town in Ireland, all the young men, if there was no one employment to all kinds of lack of opportunity, they would go into the army together.

I believe that this made a difference in their experience of the war, because the guy standing next to them in their trench and France was their cousin or the man that married your cousin. And, you knew them from birth, you knew they had of history with you, liked him or not they knew who you were, and you had someone to talk to that knew who you were in that twenty-year-old range of effective relationships. And, so the English weren't so lucky. They were often put with complete strangers.

The other important thing about the Irish experience was that their priests went with them they were in the trenches too. English priests were officers, they were playing tennis. And I don't mean that as a criticism, but they weren't in the trenches. So that was my theory as to why the incident of PTSD among Irish troops was lower than it was among the English, even having endured the Irish civil war. And when I bring, when I have that in my head and I watch any witnesses and camaraderie that is experienced around the vets, and it is not nirvana and it is not heaven and there are arguments and they have the arguments that I remember my father's generation having about, "I fought in a real war daddy" that he would say to my cousins who were in Vietnam, that still goes on. But the essential unity among these individuals remains the case. So that's an important piece of this.

I witnessed this in some of the group there that their therapy that I do. They usually run screaming for the doors and try to lure them back in. We use moral reconnection therapy, and I'm not sure people are familiar with that. It's a cognitive based therapy

designed specifically for inmates and there's an entire branch of that that's specific for inmates who are veterans. And the reason why it's worthy of attention, with regard to this camaraderie thing that I'm talking about, is because the clinician in the meeting or in the group isn't the one who decides whether people move from one phase to the next. Your peers are the ones that decide whether or not you move from one phase to the next. So, it's responsibility of other veterans to help the newcomers into the group. You can come in any time to learn the lessons and to complete the homework assignments and to do the tasks that encourage you, that enable you, excuse me, to face your demons, excuse me if need be, and to change your way of thinking, change your way of life, whatever it is that needs to happen, and that takes place.

So, I'm impressed with that kind of camaraderie and it's a little brittle at first. It's a little brittle at first. I was in a group yesterday was helping the intern run it and a young man announced that the only reason why I'm here is because I have bad choice in women. And he was right. So, his peers helped him understand that it might have more to do with his women drug dealers as opposed to the women that he's romantically involved with. And that took about an hour and a half. So, and I didn't have to say a word. This camaraderie stretched itself that far. And it was important.

I worry about veterans who had, I've had this and who either I returned to the GP, general population, for one reason or another or never emerged from the general population to enter the veterans pod because this sort of discipline that you learn in the military, that they certainly carry with them, for the rest of their lives, at least in my opinion, can be depleted under their circumstances and can certainly be decompensated under those circumstances. So I look out for that. So who are we talking about in terms of this? I'm marginally moderately surprised the number of, am I over? I'm sorry.

Hmm. Moderately surprised. No. I'm moderately surprised at the number of high functioning full language people on the autistic spectrum disorder who are in prison and who were in the navy or in the army and emerged from those experiences. And basically, as you understand anything about the diagnosis is people who do not get social messaging and think that 90% of your communication of your emotions is through your body

language. Body language your facial expression. These men and women, I treat mainly men, just don't get it and they ended up in jail, and that's an important thing to keep in mind. But when I get them in the veteran's pod, we have a specific group for those individuals. The average patient I have has PTSD serious PTSD accumulates: Childhood origin usually if it doesn't respond to treatment. The number of cases of military sexual trauma on my case load is shocking. In Leeds, I see fifteen, twenty people awake, five, six, seven of those individuals have PTSD secondary to sexual trauma. So that's what I deal with. Thank you, bye.

Professor Bonventre:

Absolutely fascinating, Dr. Cahill. Thank you so much. Next, we have Jonathan Gradess, who has been a criminal defense lawyer for many, many, many, many years. I love Jonathan, so I like to do that. But more than that, Jonathan has actually been a leader among other things for ensuring representation for the indigent and really for fighting against criminal injustice where ever it could be found. Jonathan.

Jonathan Gradess<sup>§</sup>:

Thank you. I want to, can you hear me? Good, I want to not use the mic. That's what I want. I want to take us in a slightly different direction and that direction I'll pick up on the last thing that Joe said, it has to do with the abolition of prisons. Let me qualify it so we don't go crazy. I know we have a couple of correctional officers in the audience, would be happy for them to push back if they feel the need, or Joe to push back. But we have too many people in prison. We have too many people in prison for long periods of time. That is based on a societal problem, which I hope those of you who are law students will begin to address. And it is that, as a society, we have a presumption of incarceration. It affects everything we do and say from the time

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<sup>§</sup> Jonathan E. Gradess was the Executive Director of the New York State Defenders Association from 1978 until June 30, 2017. He has worked as a criminal defense lawyer, a private investigator, and a law school professor. He serves on the Restorative Justice Commission of the Roman Catholic Diocese of Albany and the Board of Directors of Equal Justice USA. He was also the Executive Director of the New York State Defenders Justice Fund and managed its Campaign for an Independent Public Defense Commission. His career began as a paralegal, thereafter graduating cum laude in 1973 from Hofstra Law School's charter class

you were in elementary school to the time you were sitting on the bench. There is a, a worldview that when you do something wrong, there have to be consequences.

Parents teach it to their children. First grade teachers teach it to their students. It's endemic. So, it's not any accident that when a person is elected to the state legislature and they think about solutions, the solution that they think about is the amount of time that should be applied for an aberrant act. And that I think is a serious mistake. Whether it is serious or not, I have this divider, I'll make it the Hudson 'cause I come from Rensselaer county where the sheriff does not say the kinds of things you say. Or think the kinds of thoughts you think, I suspect. What we've heard here is wonderful and the question one might have is why don't we presume community services for people and send people to prison as a last resort? And I want to just talk briefly in the time I have about why that might be an intelligent thing for people who believe in prison. For people who think prison is the answer. For people who've been weaned on this idea of a presumption of incarceration.

Because if prisons are to do anything, theoretically they're supposed to send people back to the streets, to the free world, better than when they went in. They supposed to send them there rehabilitated. If you use that word, they're supposed to come back capable of functioning. And I want to share with you that they can't. They can't because prisons as an institution are artificial, alien institutions. And, within those institutions it would be virtually impossible to prepare people for free world existence. I've had clients who come home from long bids who continue to wear their underwear into the shower in their own apartment because they have done that for so long inside of prison. People who don't think about looking both ways before crossing the street, people who are used to being, getting keep-locked and because they get keep-locked, they would hoard potato chips and candy in their cell for that time when they might have to stay there. And, they find themselves out in the free world working, but in the drawer next to their desk, it's filled with candy and potato chips because of a learned behaviour inside of prison. Men and women who go to apartments, their own apartment, which has more than one room, and yet they find themselves spending all of their time in their own bedroom

because the experience of prison just taught them the safety of their cell.

When you look at those issues, you begin to say, “Ooh,” I hope you begin to say, but there's more and it's deeper and it's worse. The free world expects us to be open with one another. But prisons teach men and women not to be vulnerable or open. Many people don't even use their real name. Many people use a handle; rare that they talk about their own cases, except after long periods of time. There is an avoidance of vulnerability, but a demand when people get outside that they'd be open to relationship. They live for years in an institution where the norms are all subcultural, but they're expected by their parole officer upon release to live normally. There's a lack of personal autonomy from the day that you walk in to the day that you walk out.

Guards, good, bad, or indifferent, are sort of forced to engage in thoughtless regulation and bureaucratic rigidity. A lot of the guards don't like it. And frankly I'm not here saying let's, although I wouldn't mind it probably, but I'm not here saying we take down all of the bricks tomorrow. I think one of the realities of prison is that we need to liberate prisoners and guards together. Being a guard, and if there are guards in the audience who love their job please stand up at the appropriate time, but guards have a terrible job. Their feet hurt because they spend a lot of time on concrete. You have a high suicide rate, they have problems many times at home. They have to leave stuff at work, suicide rates, alcoholism, domestic abuse—doesn't apply to everyone—but it applies to a large number. I was in Sing Sing yesterday and I was, I saw this sign on the wall for people who need suicide assistance. And I thought, “Gee, isn't that nice?” It was right in the visitor area, but it wasn't there for the visitors it was there for the guards. So, this is not a one-way street about releasing only prisoners. It's about changing these institutions to something that is meaningful. What Craig, what the sheriff talked about is meaningful. What Soldier On talked about is meaningful.

What I was at Sing Sing for yesterday. I was there for the graduation by the Osborne Association of a parenting class for men who had been down a long time, had gone into a parenting class to learn parenting skills and to strengthen their relationships. There were couples present, there was cake, there

was chicken. It was a wonderful time. Brian Fisher, the former correctional administrator in our state, who was a wonderful guy when he ran Sing Sing and a good commissioner when he ran the state, was there. Why does that have to be happening in a gated community on the Hudson? Why can't that happen outside? Why can't we take the presumption of incarceration and turn it on its head and say, particularly as we're now approaching a \$4 billion peno-correctional industry and say, let's, let's get all the guards and retrain them for happier work. Let's take the inmates, most of them, maybe as many as 95% of them, I would say. If you want to have 10% you'll still keep in prison, let's not argue about it. But the prison that you keep them in shouldn't be like Greenhaven, or Auburn, or Sing Sing, or Comstock, or God forbid Clinton, or Southport, or Wendy, or Five Points, or all the others. It should be a little more like the Norwegian prisons, or the German prisons, or the Scandinavian prisons where there's artwork on the walls or the doors aren't locked, where people are taught a trade.

Where the image of what you do in prison is to, is to do what the, what the sheriff is doing right here in a jail. It's to make people ready for the real world in a way that you can't do in the institutions that we now run. You can't prepare people for a world of work and them at eight cents an hour. You can't work people at eight or twelve cents an hour without the ability to unionize and expect people to live and function when they get out. That's a kind of insane way to teach a normality, particularly with an abnormal economy where people have to buy their own toilet paper.

Family relationships are really a gigantic problem. And I, about eighteen years ago, and none of this has changed, I did a hearing with families of prisoners. And I did it because they were all afraid to go on their own. So, we interviewed about twelve of them, brought in a stenographer, had them testify before us, and then we converted that into testimony. I just wanted to read to you a couple of things that were excerpts from my testimony on their behalf, but it's all their words. "There is a constant sadness and a constant waiting for phone calls, letters, visiting days, parole board decisions and money to visit. A real feeling of powerlessness about even every day issues, but especially related to the process of visiting. Waiting in line to sign in, waiting to be allowed to enter, waiting to be processed, waiting to leave a

package, what can be sent in a package, waiting to be searched and what am I allowed to wear, waiting to leave money, waiting for him to be allowed into the visiting room. All along that process, I've frequently come in contact with surly correction officers who openly demonstrate their disdain of myself as a visitor, my loved one as an inmate, and both of us being of different races.”

Prisons are right now incubators for trauma, and anger, and pain. They do not protect human dignity and they don't train people for normal life. The family relationships that were being sponsored yesterday can't really be carried out in an environment where families are perpetually separated. Think about the issue of sex, which I know is often a popular topic among people. There isn't any, it's either non-existent or elicit in prison. And yet when people come out, they're expected to engage in normal relationships; relationships where they just come on out and they, they develop that relationship right away normally and it doesn't happen. It just doesn't happen. It's a hard thing to have happen.

The issue of assertiveness. Those of you who've worked with formerly incarcerated people know that one of the things you have to do to help them grow into their outside self is to teach them to be assertive, because they've spent years either being docile on purpose to avoid pain or being docile because they've been made compliant. And, they'd been made compliant in an environment where they have lost any opportunity to participate in the political process of the country. You can't vote. Joe said it himself. I mean, how many of you, raise your hand if you can do this, could you live your current life without access to the Internet?

You could. That's great. I mean, could you do that without your cell phone and could you buy without doing it online? I want to talk to you later. You stand alone, and I like people who do that. But one of the things that happens in prison is that there's an absence of meaningful recourse for inequity and you could call that inequity too. And so, people have a very, very hard time there. But the important thing, particularly for people who love this idea of accountability in prison, is to recognize that the institution, the coming up on four-billion-dollar institution. For all the good faith of its commissioner and others, and there are people who work daily to make it a better place, cannot by nature

of its weight and the nature of the way it is organized repair people for the free world. So, it is a damaging, alien, artificial institution into presumption of incarceration should be reversed so that only prisons as a last resort are used by us.

And maybe that means there'll be 5,600 people in prison and then you can make it like a Norwegian prison because you'll have those, those people who don't want to take the better work, who want to stay as guards will be able to do more creative work in prison. That's the perspective that I want to share on incarceration. And I would ask one thing of you that as you think about it, as you go forward with your own lives, look at prison through that lens, think about it through that lens, and then attack that presumption of incarceration and attack the idea and the ease with which politicians, and newspapers, and the earlier panel, and everybody just said "prisons." We get it. So, let me tell you how we send people there. That's all.

Professor Bonventre:

Thank you, Jonathan. Jonathan, I could listen to you all night, but we got to move on. We got to move on. All right, Dr. Ray Wickenheiser. Right, going to do Victor next. Okay, we'll do Victor next. I was just going down the table. Okay, Victor Pate is an activist on behalf of the formerly incarcerated, which actually is category that includes himself. So, Victor, thank you so much for coming.

Victor Pate\*\*:

Thank you. Thank you very much, and I am going to talk a little bit into the microphone. So, I'm the New York state wide

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\*\* Victor Pate is a NY CAIC Campaign Organizer who brings years of organizing experience into his role as NY Statewide CAIC Campaign Organizer. Victor is a formerly incarcerated individual who was release from prison in 1995 and successfully completed parole in 1999. His academic achievements include obtaining his G.E.D., Legal Research Certificate, Associate degree in Para-Legal Studies and Certification as a Legal Assistant. Victor became involved in the criminal justice reform arena after experiencing and overcoming the many obstacles faced by the formerly incarcerated coming home and striving to regain a foothold on life. Victor is engaged in social and criminal justice issues on various fronts, including serving a chairperson of the nation Action Network NYC Chapter's Second Change Program to assist formerly incarcerated men and women as they navigate to re-enter society. Mr. Pate also serves as an active member of the Challenging Incarceration Coalition, New York stat Prisoner Justice Network Steering committee, and Incarcerated Nation.

organizer for the New York City Campaign for alternatives to isolated confinement. Formerly incarcerated, spent over 15 years of my life in New York State prisons and jails, as well as a suffering periods of solitary confinement. And I'm here to say, and I heard a lot of good things that the fellow panellists said, which is, very moving and thoughtful and I applaud them for all the work that they're doing in transforming this miserable system the way that it is. And I like to say that, as a person who has been formerly incarcerated and had suffered the horrors of incarceration, the things that happened to people while they are in confinement is just against human nature, it's against the morals, it's against the principle of treating people humanely. And, I'm speaking more specifically towards solitary confinement. And, I can tell you, as a person who has suffered in solitary confinement, that I am still traumatized from what I experienced while I was in solitary confinement. And, because of the work that I do, it has been therapy for me, although I even now still suffer moments and, it takes me back to a certain things and certain times that happened to me; what has happened to me? I find myself even sometimes I get into an elevator and the door closed on me and I'd get a moment. And it can happen at any moment but, by the grace of God, first and foremost, I was able to somewhat deal with those issues and I'm still dealing with those issues. Through the work that I do, but when I'm going to speak to now is our campaign to transform and reform the treatment of prisoners in our state, prisons and jails.

And I am definitely one of those people who believe that if you treat a person humanely, they will begin to act humanely. If you treat a person inhumanely well, you already know the answer to that. And our human beings that are in our prisons and jails, especially those that are being held in long-term isolated confinement, are being treated inhumanely. And, to expand a little bit further on this here, 2015 our U.N. general assembly met. They came up with a set of standard minimum rules for the treatment of prisoners. Most specifically, which is now known as the Mandela rule, it basically states no one should be held in any long-term solitary confinement because that is considered torture. But wait a minute, they even went further to say that no one should be held in any long-term solitary confinement past fifteen days.

They specifically stated fifteen days and if anybody is held at any long-term solitary confinement past fifteen days, it is torture. Well, just think on our watch on this time, and this day and time, at this very moment. Right now, people are being held in long-term solitary confinement. You're talking about fifteen days, I'm talking about decades; ten, twenty, thirty, forty years; forty-three years. I don't know if anybody in here has heard of Albert Woodfox, you may, you may not. Albert Woodfox the Angola three. Louisiana, Angola prison was held in solitary confinement for forty-three years. Come on, say that again: forty-three years. That's a crime, that is criminal, it's immoral. But, they held that man in solitary confinement for forty-three years. In our New York State prisons and jails, there is no specific time capping on how long a person would be held in solitary confinement.

So just think, and just think for yourself; six by nine cell by yourself. No interaction with another human being. Sensory deprivation and lights on all day, twenty-four hours a day. Noise, banging people, screaming; and they say you're supposed to be eligible for one hour of rec. Maybe, maybe not. That basically depends on who the officer is on duty at that particular time and what relationship, if you can call it that, you may or may not have. Your food, your shower, you may not even get out of your cell. Yeah, you're suppose it, but that doesn't mean it's going to happen. Just think, you're behind the wall. Who's going to see, who's going to know, who's going to tell? You're all alone. You are at the mercy of the gods that have the responsibility of watching over you. It doesn't say that they're supposed to abuse you; but, oftentimes, these are the things that happen.

So, we have in our New York State prisons and jails, over four thousand and five hundred people that are being held long, long-term, solitary confinement, one thousand, twelve hundred or so just in long-term keep-lock. When we look at what a person is exposed to and what happens to a person in our prisons and jail. Yeah, our society, to a degree we need some type of consequences to keep people in line, to keep people acting right, to keep them doing right. But it doesn't mean that you need to torture them and doesn't mean that when you put them in these prisons and jails that you do nothing to reform this particular person. That you make no resources available for them to be better when they come out.

So, what were you saying at the New York City Campaign for alternatives to isolate confinement, is that we need to create something that is more humane than just isolation. If there comes a need for a person that needs to be separated from general population because of behavioural issues, then you should separate them humanely. That, in the course of them being separated, that they be given psychological counselling, psychological treatment, whatever treatment that they need to help them address whatever their behavioural issues may be. I'm not a psychologist, but I can tell you that when something happens, there is a reason for something happening, multi causality, for the reason why people do the things they do. Why you make the decisions that you made. And, often times, you know, we don't always make the right decision, but as a result of them not making the right decision, there are consequences. Why should the consequences be torture? Why should the consequences be abuse? Why should you be starved? Why should you not be given humane treatment? Just because you were in prison does not mean that you do not deserve to be treated human.

You have to think about it. That very same person that's in that prison and jail, maybe one day that person is going to get out and guess where they're coming? Back to our communities. How do we want these people coming back? Do we want them to come back broken, incapable of functioning of being a productive tax-paying citizen? Or do we want somebody to be able to come back and function, to be able to interact with people, to be able to contribute to the community and to society to which they are returning? Well, and I heard that there were some correction officers in this and I'm so happy that you are here, we know you're not going to identify herself, but that's okay. So, we oftentimes get pushed back from the correction officer's union and their argument is that, "well, you know, you got people that are violent, and you've got people that act out, and you've got people who assault the staff and ..."

Yeah, you can go on and on and on and on. And yeah, you do have those type of people. But what about the possibility of somebody becoming better than they were? What about the possibility to give a person an opportunity to change their life, to change their thought, to change the way that they act and or respond to circumstances? You have to treat a person humanely

if you expect them to act humanely. And, if you don't do that, then of course you're going to get the results. Of course, who wants to be in jail? Nobody wants to be in jail. I acted up when I was in jail. I was in solitary confinement quite a number of times. Did it make me better? No, it did not make me better; it actually made me worse. But it also made it difficult for me to reintegrate back to that prison society from which you separated me from.

I did a lot of things that maybe I was not supposed to do, but even in the same token of me not doing that had the treated me humanely. Had they spoken to me like I was a human being. Perhaps I would not have acted out the way that I did act out. So, I'm not going to take a long time because I see him looking. But what I'd like to really say is that we have to take a look at the treatment that people are receiving in our prisons and jails. We have to treat people more humanely. We have to create opportunities for people to come out better than they were before they went in. And we have to, we have to, put resources in place for our returning citizens so that when they do come home, they do have sources to come back home to that they will have had some opportunity to transform their lives and in the process of transforming their lives can make the transition and reintegration back into our community. Because you have to think about one thing, no matter what, or why, or reason that a person is where they all: they are all human beings. They deserve to be treated humanely and deserve to be given an opportunity to redeem themselves in their lives.

Professor Bonventre:

Thank you very much Victor for those very troubling and moving comments. Our last panellist is Doctor Ray Wickenheiser who is the nationally admired director of our state police crime lab system. Doctor.

Doctor Ray Wickenheiser<sup>††</sup>:

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<sup>††</sup> Doctor Ray Wickenheiser DPS is currently the Director for the New York State Police Crime Lab System, headquartered in Albany, New York. He is also a past president of the American Society of Crime Laboratory Directors (ASCLD) Board of Directors and is currently the Past President. Doctor Wickenheiser is a qualified ISO Auditor, conducting audits in 10 states as an auditor and DNA lead auditor. Ray is a member of the Forensic Science

Thank you. I'll slip you a five for that great comment afterwards. So, if I can find the mouse here. Okay. So, a PowerPoint is my crutch, but certainly if you've got any questions I'll be around afterwards. So, I'll kind of try to hit just the high point. So, I did want to talk a little bit about what we do at the state police crime lab system, the role of the labs, and then get to some cases because to me the stories are what really brings it home. And then just a few thoughts and recommendations. Just again, the disclaimer is these are my opinions, not those of the state police, et cetera. So just a little overview of the state police crime lab. We're here in Albany. We serve all sixty-two counties, but for the most part, we serve as their main providers in about fifty. There's five-hundred and seventy-nine agencies; bet you didn't think there was that many in this state, but essentially every shape and size we'll receive them all because your taxpayer dollars pay for them. They're all analyzed free of charge.

About two years ago, these are old statistics, about thirteen-thousand cases and over a hundred thousand pieces of evidence were received annually. So, it's a very busy place. We're a fully accredited, full service lab, so we pretty much do everything you see on TV except for document examination. We have three satellite labs across the state, but the main lab is here, and where most of our services come out of besides drugs and one toxicologist satellite in Newburgh. So, kind of getting into a little more of our topic here. Interest versus position, justice in the justice system. So, as you can appreciate, I probably don't have to talk to you too much about it. It's a very adversarial position, our situation in the justice system and where does the crime lab fit into that?

So, we have the privilege of, you know, do I look like a policeman or do I look like a scientist? You know, and I kind of make the joke about the tape on the edge of my glasses and my lab coat, but just kind of took it off to come here off and put it back on when I go to the lab. So, when there's allegations and

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Standards Board (FSSB) for the Organization of Scientific Area Committees (OSAC) for Forensic Science, a fellow in the American Academy of Forensic Science (AAFS), and has been an invited guest to the Scientific Working Group on DNA Analysis Methods (SWGDM) since 2013. Doctor Wickenheiser holds a Bachelor of Science Honours degree from the University of Regina, Canada, a Master of Business Administration degree from the University of Louisiana at Lafayette, Louisiana and a Doctorate of Professional Studies in Bioethics, Health Ethics and Policy from Albany Medical College.

different viewpoints, obviously you've got two sides and how do you get to the truth? And then you look at sort of the societal overlay of the things we have going on. Of course, we get the #metoo campaign and the importance of supporting the survivors of crime. The need for corroboration of statements with objective evidence is really... how do we get to the truth and somehow respect the rights of both the accuser and the accused? And so, when you have that mix of overlapping interests, you know, where do you get to the truth?

And it really highlights the need for objective, unbiased support for hypotheses and conclusions. You can see where I'm going with this, of course. So, the solution, the crime lab, that's why I'm here, right? So, what we're supposed to do and what we try to do every day is use sound scientific principles and what's our mission? Maximize the value of evidence. We have essentially a building full of very dedicated scientists. We could probably make better money someplace else, but the people we have are very passionate about what we do. But, one of the limitations are we only conduct the analyses of what gets brought into us. So again, a really important kind of thought there. But really at the end of the day it is us and, we really care deeply about getting it right.

But that said, our technology has really evolved over the years. And I think for those of you who are around for Steve Hogan, who said it earlier in the earlier group. You know, what we used to have for tools has really evolved. And so, the clock has to start somewhere, and we have absolutely had situations in society where people were convicted on what they would never be convicted on today. Okay. So, here's getting right into the cases because it really tells a story. So, when you look at these particular two pictures, what do you see? Okay, those are actually two different individuals. And what happened in this case, and it actually happened in Saratoga, you can sort of see the date at the, at the bottom.

Woman goes to a bar and, unfortunately, a typical story. She gets to know a guy named Mark. He invites her out back to smoke a joint, ends up, she goes there. Unfortunately, hindsight is twenty-twenty, should not have done so. And she becomes, she's sexually assaulted. All she really knows is the description of the individual, and she points them out and there he is. So fortunately given the time, DNA was run and Mark number one

was eliminated. Okay so, more investigation takes place. Mark number two is located, his DNA is run, and it is an inclusion. Okay so, when you look at the two Marks, who would know, that there were two distinctly different individuals? And without forensic science, Mark number one, we could probably all agree would be in jail all day long. So, it really illustrates the shortcoming of eyewitness testimony. I don't have to tell you that when you think about the potential or miscarriage of justice and we've seen it. So, we've got the, you know, combinations beyond that. The actual assailant Mark number two, he'd be out conducting more of whatever he might be conducting. How would you feel if you were the victim? You know, you'd come forward in good faith, and I have to tell you for the victims of violence, particularly sexual assault, to come forward is a huge deal and there is no pleasure in all the things that they have to go through. So, we need to support them as well.

So, what you've got is a real overlapping group of issues. The positive news, I guess just from the scientific standpoint. Our technology's increasing by leaps and bounds. The sensitivity in terms of what we're able to do. When I started at the crime lab, our serology section, there was no DNA. If you had sperm, essentially the case virtually stopped when you said "yes, there's sperm there. Yes, no." And that was enough to go to court just to support the victim. That in fact, yes, sex did occur and in very rare circumstances you could get as a secretor. But again, knowing that somebody was type A or B was really, you know, you and thousands of other people.

So, we absolutely have been responsible for the release of many wrongfully convicted individuals. And the goal should absolutely be to get it right the first time. The best solution is that the person never goes into jail in the first place. But of course, hindsight is twenty-twenty. So this really leaves you with the question: should every case have forensic analysis before it actually goes to court? I want to talk briefly about our second case, the exoneration of Roy Brown. So, again, a fairly old case. Sabina Kulakowski was found murdered in Aurelius, New York. The suspect was Roy Brown who was recently released from jail for threatening a county social worker. He was convicted of murder and sentenced to twenty-five-years to life, based on circumstantial evidence as well as some physical evidence.

He maintained his innocence and began the appeal process and he actually wrote a letter to an individual by the name of Barry Bench asking him to confess; wrote a letter to him. And a few days later, Barry Bench committed suicide. So, again, we work for anybody. You taxpayers pay for us. In two thousand and five post-conviction testing was requested through the Innocence Project. So, the judge ordered the testing of some bite marks. And again, just to give you some of the idea of how much work some of our scientists will go through to get the right answer. No DNA warrants were obtained, and that's tough. How many of you watch shows on TV, CSI and whatnot? Okay. I can't avoid them. I tried to, but you know, they're everywhere. So, you would think bite marks, that has to work, right? No DNA profiles were obtained and then further the judge ordered additional DNA testing.

So, we have the vaginal smear slides, we had fingernail clippings, and we had a red tee shirt. So just sort of cutting to the chase. Nothing worked; nothing worked until we got to the red tee shirt. We've got a brand-new item called a crime scope. So, actually with those goggles and everything, you see light on the tee. We additionally found eight new stains and then found a DNA profile, which was consistent with a John Doe. Essentially an unknown person. A number of mixture profiles, but consistently seeing that same John Doe and we could eliminate Roy Brown. But, who was the John Doe? So, Innocence Project received a sample from the daughter of Barry Bench, who had committed suicide, and it was processed, and we could tell, or it could be told, that he was the father and, therefore, the John Doe was Barry Bench. However, even in that case, the judge ruled the information was not sufficient.

So, the body was exhumed, and work was done on the femur and we developed DNA profiles. Again, the kinds of things that we could never do in the past. That John Doe profile matched Barry Bench's DNA profile. And so, a little bit of background of course, who was Barry Bench? Sort of new information. Of course, once it all comes together, it's like, "why wouldn't you have been able to do that and look at, you know, sort of the fullness of the investigation?" But, there's some of the sort of background information that quite often it is not a stranger but someone nearby who commits these things. So, there's a picture of Roy Brown who was released from prison. And I wanted,

excuse me, just acknowledge the work of Tim Goebel who was one of our scientists who put a lot of work into this case.

In fact, I'm stealing his most of his presentation because he's put this together. So that's the job of the director: you go out, you take credit for everybody else and I'm good at it too. So, in reality, just sort of summarizing: many of the cases unfortunately lack forensic evidence. I wish they all did, but there's lots of reasons why that happens. Believe it or not, many people don't like to get caught, so they wear masks, and gloves, and whatnot. Sometimes it's just the time and the environment, where you have degradation if the crime was uncovered. Sometimes the DNA and the other piece of evidence will disappear. Sometimes, it's just bad luck or good luck, depending on which side you're looking at. It can be not recognized or discarded. And then of course, first responders have to rush in and they save lives. They don't worry about evidence and then we look at the evidence after the fact and sometimes it really does get trod on.

So, on the objectivity side we can only work with what we have. It is what it is, but we do absolutely the best we can. We as forensic scientists believe deeply in what we do. We want to get it right, but I have to note there has been malfeasance. We really have to continue to work to improve what we do and having oversight and finding that balance is absolutely critical in what we do. So, in conclusion to kind of wrap it up. Because I know it's kind of getting late and appreciate you all staying. Forensic analysis is very objective. It excludes as well as it includes. And that's the beauty of the jobs we do.

We go to court, we testify. You all have to worry about all the rest of it. But we always try to save a sample. The evidence is still there to be retested. And so as, far as I'm concerned, of course you're kind of hearing my sales pitch. We really should be working on every case so that we can have that evidence that the right thing can always occur. But, you must understand where everyone should, not all cases, unfortunately, will have that sufficient evidence, but we've got to do our best to preserve it and make sure we do the best with it. And absolutely, the ideal scenario is to conduct those examinations up front to prevent the wrongful conviction because the best wrongful conviction is one that never occurs in the first place. Okay. So that's it for me.

Professor Bonvente:

Thank you Doctor Wickenheiser. I've got so many questions for you. I've got so many questions really for all the panellists, and I'm sure the members of the audience do as well, but we promised that we'd wrap it up fifteen minutes ago. But what a great, great panel. Can we have a hand for the panel? And also, can we have a nice round of applause for Julia, who's the symposium editor?