Introduction

Joseph Luzito did not freeze from the shock of the knife sliding into his neck. Most people would resign themselves to die on the filthy floor of the No. 3 train. But on that cold February day the wounds to Joseph's face and head galvanized him. While his attacker continued to viciously stab at him, the energy gained from anger and desperation gave him the strength to lunge up and fight back.

But while Joseph was fighting back, something worse than shock struck a deeper chord in his soul: betrayal. The person trying to murder him and his desperate bid to defend his life was being witnessed by two New York Police officers. Joseph saw but couldn't comprehend how they were standing, guns drawn, barricaded in the motorman's cab, and refusing to help him. Through the incident the cops simply stared through the blood-spattered glass window of the door at the carnage as Joseph fought for his life.

Ironically, the attacker, Maksim Gelman, was the very person the officers were tasked with locating and arresting. A mentally ill young man with multiple prior arrests and convictions (one for threatening to kill someone) who had been referred for mental health treatment but had never followed up as was the case with so many mentally ill in America. One morning in February of 2011 he snapped and began a 28-hour crime spree during which four people had been killed. These two police officers watched as the fifth murder took place right in front of them. They were armed with handguns, tasers and batons but lacked the will to save a citizen's life.

Despite bleeding out from the multiple stab wounds, Joseph managed to get the knife away from Maksim and pin his attacker to the floor of the subway car. Only after it was clear that Maksim was disarmed and restrained did the officers unlock the door and emerge to arrest him.

Joseph did not die that day as he expected. He was hospitalized and survived his wounds, but he could not shake the disgust at the cowardice of the police officers. These were professionals who rode around in cars emblazoned with "Faithful Unto Death." Faithful to whom? And to who's death? Weren't police officers sworn to serve and protect? Protect themselves?

Joseph got his answer when he sued the NYPD and the officers who had stood and watched as he was nearly stabbed to death. The court dismissed the case, relying on precedent that police had no duty to intervene in a situation to save a life. Police cannot be required to risk their own safety. The handguns and equipment they carry are for personal protection, not the protection of others.

12 years later, Daniel Penny was riding the uptown F train when Jordan Neely began threatening a subway car full of people. Neely was a mentally ill man with a long history of criminal involvement, including violence. Believing Neely's threats to be credible, Penny utilized his training, and subdued Neely with a neck hold. When Neely calmed down, Penny released him and several people, including Penny, attended Neely to ensure he was okay. Police arrived and refused to perform basic first aid or resuscitative techniques despite the man being responsive and breathing. They administered Narcan under the false belief that Neely was under the influence of an opioid. Neely died and Penny was charged with the death, despite the multiple witness statements praising Penny's intervention and condemned the police refusal to intervene other than to administer an unnecessary injection. Ultimately Penny was acquitted by a jury of his peers, but it left the nagging question about the mentally ill victim with a long list of prior criminal convictions, and a very short list of successful interventions that could have prevented the incident from ever taking place.

Why is it that stories of severely mentally ill and homeless individuals, with long criminal records continuing to commit acts of violence against citizens without penalty or punishment seemingly becoming more common? If the police will not defend citizens, and citizens are criminally charged for defending others, who will protect our most vulnerable from them? Why are these mentally ill, habitual offenders not just locked up in jail to protect the general population?

This question is not limited to New York, New England or even the East Coast of the United States. In both cases, and in tens of thousands of others across the country, a profoundly mentally ill individual, homeless and addicted to substances, who refused to participate in services or systems available to improve their lives, commits crime after crime only for the justice system to allow them to walk free with little to no penalty excepting in the most extremely violent cases.

This is because mental health is not the prevue of the criminal court system. Criminal justice is a simple system at heart.

1. There is a rule created by the legislature.
2. Someone is accused of breaking the rule.
3. Evidence of breaking the rule is presented.
4. A Judge or jury decides if the evidence proves the rule was broken by that person.
5. A punishment is determined.

The court system is not designed to deal with mental illness[1] unless it is part of one of the rules created by the legislature. The courts rely on mental health professionals, such as court appointed psychologists, hospitals and community services, to deal with the mental health of justice involved mentally ill. The court is there to enforce the laws created by the legislative branch.

If not the court, then the hospital is, in the mind of the public, the place where the mentally ill go for treatment. This perception is dead wrong. Hospitals are for treating emergency conditions and once stabilized, discharging to an appropriate care facility or the community. If you have surgery that requires rehabilitation, the hospital discharges to the rehabilitation facility or to in-home nursing care. The hospital is not in the business of maintenance. The hospital is there for crisis control and emergency services.

A typical hospital interaction recently started as a normal evening for me at home. The contract I have with the State of Connecticut requires that I am available "24 hours/7 days" to take calls or make decisions for my conserved clients. Given these wards-of-the-state's proclivity to engage in immoral, unethical and illegal activities outside normal working hours, it's not uncommon for me to get phone calls from police or emergency rooms between 10 pm and 3 am.

On this occasion my phone rang at 1 am.

I answer. Speaking slowly, distinctly and clearly into the phone. "Fryar Legal Services, office of Michael Fryar, this is Michael Fryar speaking." Every time. Every single time. No matter how slowly or clearly, I drag it out, over enunciate it, or repeat it, they always ask…

"Is Michael Fryar available?"

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[1] Except in the instances of Inability to Stand Trial, or Insanity Defense. There are other carveouts as well depending on the state.

"Speaking."

"Oh. I didn't expect you to answer the phone." Keep in mind, doctors have staff during the day and answering services at night. They don't answer their own phones and, as I'm an attorney, they don't expect to reach me immediately. I make $90 per client, which is not exactly "hire an answering service to screen my calls" money.

"This is Hartford Hospital," the female voice continues. "We have one of your clients here. She was released from jail and transported directly to us. We don't know why."

"What time did she get there?" I ask, confusedly looking at the clock. It really is 1 am. Prison transport only occurs outside working hours if there is a dire emergency. Like "shanked in your sleep and the staff in the prison infirmary don't want to deal with it" emergency. Given some of the exchanges I've had with emergency rooms over the years, it is possible that someone could be unconscious and bleeding out on a gurney in the emergency room while the exhausted medical staff stand around mystified why the victim was not answering insurance questions.

"2 pm this afternoon."

Wait. She's been there for 11 hours, through at least one shift change, and they're finally getting around to calling me? "So there' s no medical emergency?"

"No, she arrived in a psychotic state." I had to take a moment and stare at the clock. She had initially said they didn't know why she was there. I heard that. I didn't dream that. I took a deep breath. This would be like getting rusted lugs off a flat tire and I didn't know if I had the energy or wherewithal to engage in 20 questions at 1 am.

Keep in mind, I'm a lawyer with a contract to assist clients who are found to be incompetent by the courts. I complete benefit paperwork, make sure their Medicare/Medicaid/Social Security Disability/food stamps/housing voucher paperwork is completed on time. I pay bills and make medical decisions when they are not conscious or cognizant to participate. I cannot force someone to do something against their will, so usually I'm only involved when there is a dire emergency that requires immediate life or death decisions.

What I don't have is a medical or mental health background. I rely on medical and mental health professionals to advise me when making decisions. Most doctors, even those that deal

with mental health, do not have a great deal of bedside manner. Or sense of humor. Or anything resembling human emotion. I decided to take a run at it anyway.

"So…she's there with you…for a mental health evaluation…due to psychosis?" I was taking a stab in the dark and decided helpfulness was a better tactic than sarcasm, so I kept my voice neutral.

No response. I was unsuccessful in not sounding cheeky. I make an offering hoping to oil troubled waters. "She was in corrections for less than 30 days and is probably well off her medications," I added.

"She's been on observation in the emergency room. She's ready for discharge." This was a firm, no-nonsense response that conveyed she found me neither funny nor charming.

"She's still psychotic and not being admitted in a psychotic state? Or she's no longer showing signs of psychosis?"

"We've determined she is not a threat herself or anyone else. She's ready for discharge. We just need to know where to send her since she reports she's homeless."

"She is not homeless. I pay rent for an apartment where she's lived for 2 years." I provide the address. Which I know is in the medical record. In front of the doctor with whom I was speaking.

"That is the address on file in the medical record," no kidding, "We'll get a medical cab and send her home. She has court in the morning and promised to attend."

"Wait. You're saying to me a schizophrenic, who is off her medication, and in a psychotic state, who can't remember where she lives, who just got out of jail and probably doesn't have her house keys, is promising you at 1 am, that she will be at the courthouse in 7 hours."

Nice and charming died and was buried 6 feet under while sarcasm screamed up out of the grave like a bat out of hell.

"Yes. She is promising she will go." This was stated in a deadpan tone. No ability to recognize absurdity. I need to run this up the food chain.

"You are a nurse…?" I pause, allowing her to confirm or deny.

"Psychiatrist," she corrects me. I roll my eyes. Of course. The most disconnected profession from client treatment on the planet.[2] And the top of the food chain. There is no one over her who I can contact to appeal to reason.

"…Psychiatrist," I continued "thank you, who is assuring me that a dual diagnosed schizophrenic who was just released from jail and, at 1 am, in a state of psychosis, is saying that she will go home, which she doesn't know where it is and probably doesn't have keys, will set her alarm, get up in 6 hours, get herself ready, and then get to court on time."

"Yes"

At this point I started laughing out loud. This offends her more than my sarcasm.

"I don't see what is so funny about that." She responds in a haughty tone. "You certainly lack empathy for your client. Maybe you're in the wrong profession."

Gloves are off. This is going from barbed exchange to warfare.

"You wouldn't understand the absurdity because your part of the system horrifically screws these people over. I'm not laughing because it's funny. I'm laughing because it's the only reaction I have left. It's all so evil."

She sputters over the phone. I suspect that no one has ever told her she's wrong, in so many words, to her face.

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[22] Psychiatrists have the highest occurrence of mental health issues in the medical profession.

"You can't…?" she started an irate rant, but I cut her off.

"Two years ago, she was arrested and released on a promise to appear. She didn't show up for court and a bench warrant was issued. They released her the day before the hearing, she did $1500 dollars of damage to her apartment, including smearing feces across her walls, was arrested for threatening the landlord and, bam, back she goes. Does anyone want to hear from me that she needs help? That she hasn't gotten her medications?"

I give a beat for a response, she starts to speak, and I cut her off again, continuing my rant.

"Nope. All anyone wants to know is "*Does she meet criteria*[3]?"

Yes, I full on used a sing song voice for the last part. I was broken and my frustration was just unloading on this professional. But she's a psychiatrist, so if there's any professional on the planet that can handle a good rant…

"*Doesn't meet criteria? Can't do anything*. And that's been the cycle ever since – she's released from corrections to the hospital in a psychotic state, discharged to her apartment because she doesn't meet criteria, doesn't show up to court the next day, does thousands of dollars of damage to the apartment or building, threatens someone who tries to stop her, gets arrested, corrections doesn't provide her medications, releases her to the hospital in a psychotic state and away we go again." I paused for a breath. She took advantage.

"I fail to see the humor. It's not our job…" My cardio level is pretty good so that's all she got out before I was off and running again.

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[3] Ciriteria for hospitalization is "threat of harm to self or to other." If a client is not an active threat to someone else or themselves, insurance will not cover the hospital stay and they must be discharged. There is a third category "profoundly disturbed" but no one uses it as all clients would need to be admitted under this criteria and there aren't enough hospital beds.

"No, it's not your job to treat her. Just get her to baseline[4]. It's not the criminal court's job to enforce mental health or addiction treatment because that's for mental health professionals. It's not the jail's job to get her meds or treat her. It's not community services' job to transport her or get her help because she's refusing. It's no one's job, no one is responsible, and that means she doesn't get help."

"You're her conservator!" she crowed in triumph, seemingly finding the flaw in my logic. "You're the responsible one."

"Right. The lawyer. With no background in mental health, must step up and find a solution because the mental health system is so broken it can't actually help anyone. Unfortunately, lawyers are one trick ponies with a single solution to every insurmountable problem."

I let that hang. She wasn't perceptive enough to put 2 and 2 together.

"We go to court, Doctor. We sue. We get judgments and orders and penalties. That's how we get things done. That's why attorneys are appointed as conservators. Because we file things in court and have everyone show up and the judge makes a decision and issues orders." And I hung up the phone.

I breathed deeply. Technically the hospital couldn't discharge the client unless I agreed, but that never stopped them wheeling them out the front door and, literally sometimes, dumping them on the sidewalk. There was a small possibility I bought my client a night's sleep and breakfast before she was sent to court in the morning. Chances were better that they had already sent her out in a med cab hours before and the entire exchange was perfunctory because someone finally noticed in her chart that she had a conservator, and they called me as an afterthought.

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[4] Baseline is "not trying to kill someone or yourself" so you're safe to return to the community.

I went back to bed. But not to sleep. There would be no litigation. I'd filed complaints with the state before over similar issues and the investigative medical board always sided with the hospital. No attorney is willing to go the expense or time to attempt to sue the hospital or state over an issue regarding indigent clients. The cause is just and there is a potential payout, sure; but, the clients are mercurial and may disappear or die before the litigation got going.

What else did I have that I could do?

If the courts are there to enforce criminal codes and laws, and the hospitals for crisis care only, then it's the promised community services that will intervene for long term care and support. Much like a rehabilitation facility is charged with teaching someone to walk again after spinal surgery, community based services are designed to assist the mentally ill with successful integration into the community.

In 2024 it has been reported that California, from 2019 to 2024, spent $24 billion dollars[5] on community services to combat homelessness. Those funds were earmarked to go to housing, mental health, addiction services, and other programs to alleviate or end the issues and factors that created the circumstances in the first place.

The hardcore reality is that the funds were primarily spent on salaries and benefits for the owners and CEO's of the organizations, then salaries and benefits for the staff, then rent for the buildings for the staff, and then equipment for the staff, then cars for the staff, and other odds and ends for the organizations tasked with providing the services. We really don't know the extent because there is no oversight or audit requirements. Or performative outcomes either.

[5] According to the California State Auditor's Office and as reported by AP, Bloomberg and CBS San Francisco

You see, while a homeless individual has a large number of opportunities for services, including temporary and permanent housing, meals and food banks, medical treatment, substance abuse treatment, safe spaces to use substances, medication services including visiting nurses, inpatient and outpatient services, emergency funds, Social Security disability income and dozens of other community based services, they also have the ability to say "No Thank You"

This creates an environment where we have a vast number of individuals employed, services stocked, and buildings rented and furnished; but, they sit around and drink coffee and watch YouTube videos because we can't force clients to utilize the services they offer.

Worse still, people of limited ethical constraints[6] can take advantage of the broken system to their economic benefit by reporting they're engaging clients, but in reality, are just sitting collecting state or federal checks.

In other words, since homeless individuals cannot be forced to participate in programs, there is no way of knowing if these programs had any impact or effect on homelessness, and everyone gets paid to show up to work. Whether they have clients or not.

A lot of people are paid millions of dollars to maintain the charade.

Courts, hospitals and community service providers make up an unholy trinity that are sucking billions of dollars a year off state and federal governments for a problem they have no interest in solving because they are making too much money on it. Fixing the issue would mean the end of their jobs, income, third and fourth houses and luxury cars.

It would take an insider who is not in on the grift, with 20 years' experience, to explain how we got to this impossible place, what is really going on in the homeless industrial complex,

[6] Criminals.

and how the system could be reformed to be efficient, effective, and successful in eliminating homelessness.