

Law is Hell

Huemer's new *Justice before the Law* is full of memorable passages, but this is the one that stayed with me:

There are few threats more frightening to Americans than the threat to embroil someone in legal trouble. An illustrative case occurred at a nursing home in California in 2013. An 87-year-old woman living at the facility had stopped breathing, and a nurse on staff called 911, the local emergency services. The 911 dispatcher pleaded with the nurse to start CPR, knowing that the resident would not survive without immediate assistance. The nurse refused, citing company policy. The dispatcher assured the nurse that she could not be sued if anything went wrong during the resuscitation attempt and that the local emergency services would assume all liability, yet the nurse remained unpersuaded. The resident died soon after. The dispatcher's assurances to the nurse reflect common knowledge of American culture: Americans have come so far in our fear of our own legal system that a nurse might plausibly be deterred from trying to save someone's life by the fear of a lawsuit.

Americans do not only fear losing a legal dispute; we fear getting involved in a legal dispute in any manner, whether one is in the right or not. As soon as one is sued, let alone prosecuted, whether rightly or wrongly, one expects to endure months or years during which the legal threat hangs over one's head, and one is almost guaranteed to lose thousands to tens of thousands of dollars, no matter the outcome.

The key insights:

1. Virtually everyone in the United States, no matter how innocent, would be terrified to be sued or charged with a crime.

2. Virtually no one, if sued or charged, would say, "I have nothing to worry about, because we have a well-functioning system that prevents the punishment of innocent people like me."

In fact, guilty people would plausibly be *less* anxious about being sued or charged, because they are usually more experienced at gaming the system.

Which raises an obvious question: Why do people tolerate – and even energetically defend – a system of justice that virtually everyone thinks would hellishly mistreat them if they were innocent?

The best response is something like: "Sure, almost any innocent person would be terrified *if they were accused*. However, innocent people rarely worry that they will be accused of anything, for the obvious reason that innocent people are hardly ever accused of anything."

Yet on reflection, this is still pretty damning. It amounts to, "While we have a rotten system for assessing guilt, we're good at avoiding unreasonable suspicion." Especially when the main mechanism for avoiding unreasonable suspicion is simply flying below radar. If a plaintiff or a prosecutor ever realizes you're alive and decides to make you suffer, your innocence will not save you from a world of pain.