

Why We Need Markets for Justice

The fundamental cause of law enforcement abuses is deeper than the essential blank check of violence in most cases. The fundamental cause is that taxpayers are disconnected from the monetary costs of law enforcement, particularly hiring and firing. If a company security guard mistreats an employee, odds are he'll be fired once a supervisor determines wrongdoing. If a security guard mistreats customers, people will start staying away if nothing is done.

Who would personally go, or hire someone to personally go, to demand that blood be drawn from an unconscious suspect? There might be a victim or victim's family who would be interested enough. But who would go so far as to threaten violence against a medical professional who wouldn't comply, and risk retaliation if they initiate violence? Note that I'm talking about when someone is suspected of a crime. Now, who would have so forcefully demanded blood drawn when someone isn't suspected of any crime at all? What kind of investigation could morally justify threatening violence against someone? It took the manhandling of Alex Wubbels to demonstrate how far law enforcement will go, not because of an actual crime, but for not obeying an order that turns out to be unlawful and downright immoral. Yet I wonder how few people have learned that to force an investigation requires the threat of violence, starting with arrest, up to jailing and prosecution.

Moreover, who would hire someone knowing that if their chosen law enforcement agent did something wrong, then those who hired him would personally be liable to pay for damages, if not criminally responsible for any of the agent's criminal actions? Things change dramatically when accountability is introduced, that individuals become responsible for those they task with enforcing "law and order." However, when government is the buffer, we're insulated and need not worry about specific actors. It becomes easier to hope beyond hope that those hired, by those already hired on the other side of the buffer, will be of good character and effective.

Richard Ebeling once told me, "Government makes criminals of us all." Government sets up society so that no person can live a life without using some sort of government service, paid for through coerced taxes. I later came to realize that government needs to make moral cowards of us all, in order to keep us dependent on it for the dispensation of justice. And when it fails, we can be outraged for a while, but we can soon enough look away and live our lives as if an event never happened. After all, the general nature of most tax funding means that when there is liability, we can wash our hands as Pontius Pilate did, and never blink at how much a wrongdoing settlement cost each individual taxpayer. It's so much easier than the alternative of doing it ourselves or finding the right person to do it for

US.

When Detective Jeff Payne, SLPD, infamously arrested Alex Wubbels weeks ago, he said this to another hospital employee (a supervisor?): “And I understand what your policy is. I’m trying to telling you what you need legally, ok, and your policy right now is co-, uh, contravening what I need legally, ok? Which I may not need it, if you have blood that I can give Logan to come and get a warrant and test for later, ok. but this is all stuff that we should have a conversation with before I’m told no no no no no. There’s a very bad habit here of your policy here interfering with MY LAW, ok? I am trying to conduct a criminal investigation, step through the process, ok? And you guys are trying to prevent liability coming on the hospital. And I appreciate that, but those sometimes don’t meet, and they don’t match up.” [emphasis added]

Payne is a bigger thug than I thought. His own words show his attitude: “my law.” He called it a “criminal investigation” when that patient was not suspected of any crime. He either disregarded or didn’t know of last year’s Supreme Court ruling, when as senior law enforcement he should have known better. He should have known, as a law enforcement veteran, the proper procedure for obtaining evidence. The attitude of “seize evidence now, get a warrant later” is something any rookie defense attorney can seize on to get charges summarily dismissed. If ignorance of the law is no excuse for civilians, is that not also so for police?

Prosecution wasn’t his problem, though. As far as he was concerned, forget the nurse and hospital, and let them assume liability. Had Alex Wubbels drawn the blood, she’d have found herself on the receiving end of a civil lawsuit. It would have assuredly finished her career in anything medical, and she’d likely have found it impossible to get a job in other industries that required individual judgment and basic knowledge of law. If the patient convinced a DA to file misdemeanor charges of battery, that would have appeared on any background check for the rest of her life, and some employers will not hire anyone with so much as a minor criminal history.

What she did, though, as someone pointed out, has made her the most famous nurse in the U.S., able to put down “I stand for patients’ rights because I know hospital policy and the law” on her resume.

By contrast, Payne has shown he either disregards the rules and makes them up as he goes along, or he doesn’t know the basic legalities of the phlebotomy he was supposedly trained in. He showed physical anger in slapping the nurse’s phone away and dragging her out of the hospital. It’s therefore understandable that he’s been suspended, will likely be fired, and may face criminal charges. Three decades on the force aren’t enough to offset the possibility that he might do it again, to anyone. It’s just as understandable, then, that Gold Cross Ambulance let him go. He said, captured on bodycam, “I’ll bring them [the

hospital] all the transients and take good patients elsewhere.” But even with that stupid thing to say, he was too big a risk. No ambulance service now could chance him getting violent with someone who didn’t do what he wanted. They can’t afford the risk of being sued, let alone the bad PR, if he threatened to arrest or threatened to have someone arrested.

I don’t care much for Reason magazine, but it made an important observation early on: “What Payne did here is patently, inescapably wrong in just about every possible way. Just one year ago the Supreme Court ruled that police must get a warrant or consent in order to draw a person’s blood. It’s utterly inconceivable that Payne, who is a trained phlebotomist with the police, did not know this. According to coverage from the Salt Lake Tribune, Payne acknowledged that he didn’t have probable cause to get a warrant, but nevertheless insisted he had the authority to demand Wubbels draw blood.”

From the headline, the Reason piece calls for every cop involved to be fired, and yes, that should include his supervisor. I’d also have to say it should include the present campus police and hospital security who failed in their jobs to stop a clear aggressor. If they didn’t know what Payne was doing was immoral and unlawful, they should have as a matter of basic competency. If they simply defer unquestioningly to a stronger uniform, then they shouldn’t be in their jobs.

At least the hospital now has established a new policy about police having to deal only with supervisors, and away from patient areas. That will make it a little easier for campus police and hospital security who don’t know what they’re supposed to do.