

Cops' use of force: Why so few charges?

Oregon police officers are rarely held accountable for undue violence. Here are six possible reasons.

BY JASON RENAUD
AND JENNY WESTBERG
CONTRIBUTING COLUMNISTS

Whenever police officers use lethal force, they well know there could be consequences, including being charged and prosecuted by the district attorney. Charges may include assault, manslaughter, even murder.

But does it actually happen? Ever?

We've all heard the grumbles. "The police are never indicted!" And it certainly seems so. We watched and hollered at the TV as Darren Wilson got a free pass from a Ferguson, Mo., grand jury. We saw the Portland officers who killed James Chasse get off squeaky clean, without token discipline, let alone criminal charges. But we also saw — just weeks ago — six Baltimore

officers indicted in Freddie Gray's death on charges ranging from false imprisonment to second-degree murder.

That sort of mixed bag leaves the question open: Have Oregon district attorneys ever charged a police officer with a use-of-force crime?

We probably keep better track of use-of-force incidents than most, but this was something we just didn't know. And it's an important question because it's a measure of justice. And if justice isn't properly exercised, its muscles atrophy and those who need protection lose faith in its strength — to act, to flex without favor.

So we decided to find the answer.

It turned out that getting that answer was not a simple matter of asking Siri, searching Google, or thumbing through card catalogues in a dusty archive. The information we wanted was not online. It wasn't offline either. It didn't exist. No one keeps track of it. No one compiles it. No one sends it to their supervisor for round-filing.

So we went old-school. One of our volunteers went down the list of DAs in Oregon and contacted each and every one of them, asking the same question: "Have you charged police officers with use-of-force crimes?"

Here's what we found out.

■ Twenty-six out of 36, or 72 percent, said no, they had never charged a police officer with a use-of-force crime.

■ The remainder who responded, 17 percent, said their legal actions were limited to a small number of cases.

■ None of the 32 who responded reported having filed a charge of lethal force.

Remember that since no one keeps track of this information, electronically or on paper, our results are only as good as the respondents' memories. However, the information comes from smart respondents, district attorneys, who usually have good knowledge of what goes on in their counties. Therefore, while you shouldn't use these numbers in high-stakes betting games or

Survey says: Oregon district attorneys rarely charge officers with undue force

■ Baker County DA Matt Shirtcliff: Brought no charges
■ Benton County DA John M. Haroldson: Brought no charges
■ Clackamas County DA John Foote: One convicted, 2012

■ Clatsop County DA Josh Marquis: Brought no charges

■ Columbia County DA R. Stephen Atchison: Did not respond

■ Coos County DA R. Paul Frasier: One charged, prior to 2005

■ Crook County DA Daina Vitols: Brought no charges

■ Curry County DA Everett Dial: Brought no charges

■ Deschutes County DA John Hummel: Brought no charges

■ Douglas County DA Rick L. Wesenberg: Brought no charges

■ Gilliam County DA Marion Weatherford: Brought no charges

■ Grant County DA Ryan Joslin: Brought no charges

■ Harney County DA Timothy J. Colahan: Brought no charges

■ Hood River County DA John T. Sewell: Did not respond

■ Jackson County DA Beth Heckert: Brought no charges

■ Jefferson County DA Steven Leriche: Brought no charges

■ Josephine County DA Stephen Campbell: Did not respond

■ Klamath County DA Robert W. Patridge: Brought no charges

■ Lake County DA Ulys Stapleton: Two charged and convicted

■ Lane County DA Alex Gardner: Three charged, two convicted

■ Lincoln County DA Michelle Branam: Brought no charges

■ Linn County DA Doug Marteeny: Brought no charges

■ Malheur County DA Dan Norris: Brought no charges

■ Marion County DA Walt Beglau: Brought no charges

■ Morrow County DA Justin Nelson: Brought no charges

■ Multnomah County DA Rod Underhill: One charged, 2011

■ Polk County DA Aaron Felton: Brought no charges

■ Sherman County DA Wade McLeod: Brought no charges

■ Tillamook County DA William Porter: Brought no charges

■ Umatilla County DA Daniel Primus: Brought no charges

■ Union County DA Kelsie McDaniel: Brought no charges

■ Wallowa County DA Mona K. Williams: Brought no charges

■ Wasco County DA Eric J. Nisley: Brought no charges

■ Washington County DA Bob Hermann: One conviction, one acquittal

■ Wheeler County DA Daniel Ousley: Brought no charges

■ Yamhill County DA Bradley C. Berry: Did not respond

Source: Mental Health Association of Portland

By the numbers

36 counties surveyed

26 DAs brought no charges

6 DAs brought charges

4 DAs did not respond to the survey

pub trivia tournaments, they should be reliable enough to frame some general, carefully worded conclusions.

Here is one: Oregon district attorneys rarely press charges against officers for use of force.

And that raises another question: Why?

Here are six possible reasons. It's likely you can think of more.

1. It doesn't happen

Let's give police the benefit of the doubt for the first reason. Police officers in Oregon are well chosen, well-trained, well-equipped and well-supervised to act within law and policy. Perhaps they always act within law and policy and never use undue force.

But in our last article, "Death by cop: Who's at risk?" we listed approximately 300 cases of officer-involved force in the Portland area alone. An impartial, common-sense review of these cases would show perhaps one in 10 included use of force undeniably beyond what was necessary, in which (a) the officer — and not the person harmed by the officer — escalated the level of force without good reason; (b) force was clearly disproportionate to the level of threat; or (c) officers used force prematurely.

One in 10, for 300 cases, would mean 30 charges for some form of undue force. But the Multnomah County District Attorney has charged only one officer with undue force in recent memory, Dane Reister.

Therefore, we believe it is unlikely that there are no incidents of excessive use

of force.

2. It's a geographic difference

Most counties in Oregon are wide-open places where human interactions are few and police are a rare sight.

We think Oregon's geography could be a substantial reason for the low number of charges by district attorneys. People are terrible, especially to each other, and perhaps the farther we live apart from each other, the safer we all are. Less person-to-person contact suggests fewer police contacts that could result in undue force.

This one is a toss-up.

3. The DAs don't know

Perhaps the absence of charges indicates a lack of structure to collect and disseminate information. Or perhaps the data are there, somewhere, but so deeply buried in elaborate, duplicative systems that no one can find it. Or perhaps the doors for civilians, especially civilians who are harmed by police and seek accountability, are barred.

In fact, it's all of the above.

For the Portland Police Bureau, the checks and balances of accountability comprise, by our count, 30 distinct levels of regulation. Dozens of agencies and hundreds of people, both professionals and civilians, are involved in Portland police oversight. The most powerful of these regulators is the district attorney.

In its 2012 Findings Letter, investigators from the U.S. Department of Justice

described Portland police regulation as "Byzantine," a "self-defeating accountability system," and listed dozens of important disconnects and complications. What's not mentioned in the letter is the absence of regulation by county district attorneys.

In cases of lethal force, each county district attorney is directed by Oregon Senate Bill 111 (sponsored in 2007 by then-state Rep. Avel Gordly in response to the death of James Chasse) to follow a predetermined and regulated process. In Multnomah County, that process includes an investigation, a grand jury determination and the public distribution of information after case closure — a model for the state.

With 30 levels of accountability, how could anyone not know about undue force? Each level should be a listening point where a community complaint can be heard and directed toward resolution. But those employed to listen have, too often, locked the gates and nailed the windows shut.

What exactly did the DOJ mean by a "self-defeating" accountability system? Well, here's one example: In 2013, out of 338 community complaints made to the city's Independent Police Review board, 98 percent were dismissed or referred back to the police for resolution, according to the IPR's Annual Report.

Let's repeat that:

■ 338 complaints about police.

■ 331 of them dismissed by the IPR, or sent back to the police for resolution.

For people who have been physically