

NEWS FROM THE PORTLAND AREA AND THE NORTHWEST



STEVE DUIN
COMMENTARY

The truth? There are no consequences

After watching Officer Kevin Tully's inventive performance last week in the dramatic arts, I began to wonder, like many readers, if there's discipline or disincentive for the Portland cop who pretzels the truth in a Multnomah County courtroom.

Attorney Greg Kafoury insists there is neither.

"You have absolutely nothing to lose," said Kafoury, who represented Jason Elgin in his \$300,000 lawsuit against the city. "Nothing is going to happen to him (Tully), no matter what. And everyone knows it."

In the past 17 months, I've sat through two cases in which Port-

land cops took the truth for a wild ride.

In September 2009, a jury awarded three men \$175,000 after an encounter with Portland police in a downtown parking garage.

The jury found the testimony of two independent witnesses more convincing than that of Officer Leo Besner, whose police report includes a self-serving fantasy involving Officer Brett Hawkinson that attempted to justify Besner's conduct and instincts in the parking garage.

"There's no question that it was a concocted story," Kafoury said, "involving deliberate falsehoods by two officers under oath."

Yet Besner, who cost the city more than \$852,000 in tort claims and jury awards, was promoted to sergeant in December. In that ceremony, police Chief Mike Reese likened Besner to Teddy Roosevelt -- "at least he fails by daring greatly" -- and dismissed his

hero's "ubiquitous critics."

In the Elgin case, Tully was found liable for battery after tasting a 30-year-old college student who'd fallen asleep in a Denny's restaurant.

"Why is the police officer escalating a situation where someone is sleeping in a booth?" asked Circuit Judge Kathleen Dailey, who presided over the case. "The officer should be trained to manage the situation without escalating it."

Tully's testimony under oath was contradicted by Elgin, his companion and two witnesses at Denny's.

Mary-Beth Baptista, director of the city's Independent Police Review Division, said she has two issues in this case. The first is the testimony of waitress Cherisse Watts that Tully told her she could file a complaint if she was upset by the unnerving brutality of his conduct.

"He also said," Watts added, "that next time we need the police at Denny's, he might not come."

"We're looking into that," Baptista said. "We're looking into whether he (Tully) engaged in misconduct by saying something that's retaliatory."

The second issue is whether Tully lied under oath when he denied making that statement.

"That's a criminal charge," Baptista said. "The DA's office will have to decide if there's enough evidence to pursue perjury charges."

"If the court refers something to us, we're going to review it," said chief deputy DA Norm Frink. "But perjury cases are extraordinarily hard to prove and the penalties are meager. Sometimes our response has been that we are not able to call police officers as witnesses when we feel there have been serious questions as to truthfulness."

When serious questions abound for DAs and prospective jurors, not just defense attorneys, the police have a serious problem. When Chris Humphreys is canonized, Leo Besner is promoted and the city regards Tully as nothing more than an accounting dilemma, the hard-earned reputations of the best cops suffer.

"That's both a risk and a salvation," Kafoury said. "If we reach the point where people don't believe what the police say, that they don't take their oath seriously, that they care more about outcomes than their own integrity, our criminal justice system is in grave difficulty. But we must reach that realization before anything is done about it."

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