▶CRIMINAL LAW

To Protect and Serve…and Lie?

Why Even "Good" Police Lies are Bad for Kansas Justice

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Introduction

Lies are in the news these days — not only because this is an election year, but also because as this article goes to print the United States Supreme Court is poised to decide whether Congress can constitutionally criminalize lying about military honors.[1] The proponents of the Stolen Valor Act have argued that such lies sow confusion about military standards and undermine the integrity and public reputation of the military honors system.[2]

While concerns about damage to a revered system may or may not be adequate to *criminalize* lying, they are certainly adequate to *discourage* lying, especially when that system is the justice system, and the liars are police officers.

This article will explore the ways in which police lies are tolerated — even encouraged — within the justice system, discuss the harm that comes from those lies, and suggest actions that courts, litigators and legislators can and should take to curb those lies.

Do Police Officers Really Lie? Even in *Kansas*?

Police officers themselves will readily admit that they lie to suspects and the general public in the course of undercover operations during which police take on false identities and otherwise engage in faux criminal theatrics.

These lies allow the police to secretly engage in seamy underworld conduct, from receiving lap dances at strip clubs,[3] to soliciting illegal sex on the Internet,[4] to manufacturing and distributing dangerous drugs.[5] Police also resort to fabrication as a means of inducing a suspect to confess or consent to a search.

One of the most widely cited treatises on confessions and interrogations promotes this category of lying as a legitimate police investigation tactic, stating summarily that "it is generally acceptable to verbally lie about evidence connecting a suspect to a crime."[6] Kansas police officers frequently use this tactic.[7]

Unfortunately, police officers too often also lie while under oath. Such lies have been well documented in judicial findings, jury verdicts and empirical studies.[8] We proud Kansans may like to think that our fair state is surely free of such big-city-style corruption. And yet, as illustrated in the below endnote, judges have found that even Kansas law enforcement officers lie under oath.[9]

From the humble traffic cop who lies at a suppression hearing about why he pulled a motorist over[10] to the high-level state and federal agents who lie under oath to cover up a colleague's violent or otherwise unlawful conduct,[11] sworn police lies infect the Kansas justice system.

Aren't Some Police Lies "Good Lies"?

Our justice system has long embraced the first two types of police lies described above. The Kansas courts have called undercover lies "necessary and legal," and "good police work;"[12] likewise, our courts have found interrogation lies to be "clearly in the interest of the State

in conducting a thorough and accurate investigation."[13] These police lies are so prevalent that we rarely think to question their appropriateness.

Even those who abhor police lies under oath believe that the police can, with a bit of prodding, be trusted to tell only "good lies" in the field.[14] And yet, given the evidence that police do lie under oath, one has to wonder: Does the acceptance of frequent lying in the field have a spillover effect into the courtroom? Can an officer who is trained to live a lie during an undercover operation fairly be expected to turn off the duplicity spigot upon crossing the threshold into the courtroom?

As one former Assistant United States Attorney has cautioned, when police officers are encouraged to believe that their investigatory lies are "for the public good," that justification "may readily transfer to other lies," including lies under oath:

> The inherent problem with lying for the public good is that people who believe their entire work is for the public good, as police officers do and should, may use this rationale to justify any and all lies that they tell.[15]

In other words, police officers may come to believe that if it's okay to lie in the field to catch a crook, it must also be okay to lie in the courtroom to catch a crook—or at least to convict the guy whom officers *think* is a crook.

This problem is reason enough to ask: Is the "public good" really furthered by a justice system built on police lies of any sort?

Rethinking "Good" Police Lies

Once-popular images of honest police officers are now considered naive and quaint—just ask Sheriff Andy Taylor of *The Andy Griffith Show* or Officer Clemmons, the singing policeman in *Mr. Rogers' Neighborhood*. Today, the public understands that police officers lie.

Unfortunately, this understanding makes people wary of police and ultimately hurts the police function. "[P]olice need community help in maintaining social order."[16] When the public's perception of police honesty decreases, so does its willingness to cooperate with the police. A lack of trust between the public and the police may even contribute to a more general disrespect for the law.[17]

Sustained undercover lies can be particularly harmful, as they place officers in unsavory and psychologically taxing positions.[18] The extensive lies necessary to carry out this work desensitize those who perform it with "a morally numbing, contagious quality."[19]

Additionally, the details of undercover work are rarely recorded or disclosed for examination by anyone outside of law enforcement. With no requirement of a warrant or even reasonable suspicion to initiate an undercover investigation, undercover lies receive the least judicial and public oversight of all police functions.[20] This lack of transparency and accountability renders undercover lies uniquely anti-democratic.[21]

Interrogation lies may also cause more harm than good. Most importantly, this tactic contributes to false confessions, which in turn contribute to wrongful convictions.[22] Wrongful convictions hurt more than just the convicted innocent; they leave the guilty party at large, thereby putting the greater public at risk should the criminal strike again.

Supporters of the status quo may shrug and say that despite the harms caused by police lies, they are a necessary part of police work. But it is difficult to find empirical evidence to support this assumption. Given the costs and unpredictability of undercover operations, some critics have questioned their presumed efficacy.[23]

They point to European democracies, which have not always found it necessary to embrace such tactics.[24] In the Netherlands, for instance, undercover ruses are rarely resorted to, in part because "some public prosecutors view undercover operations as a very invasive and drastic method of investigation that is only to be used as a last resort."[25] And the proposition that lies are necessary to extract (true) confessions is even more questionable.[26]

Notwithstanding these concerns, this article is not a call to end all police lies in the field. The authors recognize that this is unlikely and perhaps even undesirable, and that "[c]overt operations will undoubtedly persist regardless of academic criticism."[27] Rather, this article is a call to skepticism about the value of police lies, and the tolerance with which we in the justice system view them.

If judges, litigators, and legislators can nudge the police toward a stronger culture of honesty in the field, then perhaps we can better rely on them to maintain honesty in the courtroom — a result surely desirable by everyone interested in criminal justice for all Kansans.

Curbing Police Lies

There are many ways in which favoring police honesty over police deception might reduce the landscape of police lies, including the following:

Courts: *Err in support of police honesty when applying the law; take police lies into account when evaluating police credibility.*

When the public's perception of police honesty decreases, so does its willingness to cooperate with the police. A lack of trust between the public and the police may even contribute to a more general disrespect for the law.[17]

Courts "have great latitude within which to end police lying"[28] — if only they use the tools allotted to them. The legal defenses of entrapment and outrageous governmental conduct were developed to guard against the most coercive and scandalous types of undercover lies, but these defenses have come to be interpreted so narrowly that their deterrent effect is nearly nugatory.[29]

Likewise, the exclusionary rule is meant to deter the police from using overly coercive lies to induce confessions and consents, and yet the Kansas Supreme Court has repeatedly held that "deceptive interrogation techniques alone do not establish coercion."[30]

Courts with an interest in curbing police lies should exercise their discretion to impose the prophylactic measures of suppression, dismissal, and acquittal in cases arising from coercive or otherwise unfair police deception.[31]

Courts should also take police lies into account when assessing officer credibility both during pretrial hearings and at trial. For instance, when an officer has demonstrated a willingness to lie in the field to catch a crook, courts should question closely their willingness to lie on the stand to ensure that presumed crook's conviction.[32]

Finally, courts should grant defense counsel the latitude necessary to educate jurors about police lies at trial, by, for instance, allowing the measures suggested below.

> ***Defense counsel:*** *Talk about police lies during voir dire; put police lies into evidence; ask for a cautionary instruction.*

Even while understanding that the police commonly lie to investigate crime, jurors may still tend to assume officer credibility on the stand. To tackle this problem, defense counsel must impress upon jurors at all stages of trial that they have a right — indeed, a duty — to distrust the lying police officer.

This education should begin at voir dire, with probing questions to diagnose those jurors who are inclined to believe that police officers never lie under oath.[33] Counsel should then present evidence of every lie any testifying officer has told in the interest of securing an arrest and conviction.[34]

Finally, counsel should request a cautionary instruction in cases involving strong evidence of police lies, whether those lies were told in the course of the investigation, on an affidavit for a warrant, or on the witness stand in court.[35]

Courts unblinkingly caution jurors about accomplice and paid-informant testimony.[36] Why should we not also caution jurors about police testimony when the testifying officers have demonstrated a motive and a willingness to lie by *in fact* lying during the investigation of the case?

> ***Prosecutors:*** *Charge officers who lie under oath with perjury.*

Pursuing perjury charges against lying police officers is both an obvious and an obviously difficult proposition. Perjury cases against lying officers are "too rarely pursued,"[37] perhaps in part because "[i]f a prosecutor establishes that an officer has committed perjury, any case the officer participated in is implicated."[38]

But if the officer has done good, honest work in other cases, those cases should stand on their own; on the other hand, if the officer's lies have infected those cases as well, then their integrity is already implicated whether the officer is criminally charged or not.

> ***Legislature:*** *Pass proposed legislation obligating police to videotape interrogations.*

The Kansas Legislature has previously declined to pass legislation requiring the videotaping of felony interrogations.[39] It is far time for Kansas to adopt this protective measure. The Kansas Division of the Budget has estimated that the requirement "would have a negligible fiscal effect on expenditures,"[40] and the measure would allow courts better oversight of police lies both *during* interrogations and *about* interrogations.[41] According to one source,

> …[t]here are now eighteen states, and the District of Columbia, that have laws relating to electronic recording of custodial interrogations, and scores of other individual police departments from across the country do so voluntarily.[42]

A former United States Attorney who led a study of the practice reports that it benefits all parties in the justice system, and "[v]irtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice."[43] A state that is confident in its police interrogation practices has no good reason to resist recording those practices as a matter of law.

Conclusion

Earlier this year, the United States Supreme Court held that when police secretly plant and monitor a GPS device on a suspect's car, investigatory action is a search subject to the Fourth Amendment.[44] Writing for the majority, Justice Scalia analogized the GPS device to an imaginary 18th-century constable who hides in the back of a coach so that he can track its every move.[45]

While not all of the justices agreed with Scalia's reasoning, they all expressed support for judicial limits on the secret use of modern technology in police investigations.[46] This article argues

for judicial and other limits on the secret use of old-fashioned deception in police investigations.

If the constable hiding in the back of the coach is worrisome, how is the constable sitting in the front of the coach—after creating a false identity and pretending to be the driver's friend—any less so? Police lies are not always required for police investigations and interrogations, and they often cause more harm than good.

Most disturbingly, it appears that the acceptance of police lies in the field may lead to a willingness on the part of police to lie in court. If we in the justice system recognize these facts, we can better use the tools at our disposal to ensure the trustworthiness of both out-of-court police work and in-court evidence. ▲

ENDNOTES

1 *United States v. Alvarez*, No. 11-210 (U.S. argued Feb. 22, 2012). The question in *Alvarez* is whether the Stolen Valor Act is facially invalid under the Free Speech Clause of the First Amendment. The act makes it a crime to falsely claim in speech or writing to have been awarded military decorations or medals. 18 U.S.C. § 704. Kansas criminalizes a similar (but broader) category of lies—falsely claiming to be a member of a fraternal or veteran's organization. K.S.A. 216410.

2 *See* Brief for the United States at 36-46, *United States v. Alvarez*, No. 11-210 (U.S. Dec. 1, 2011).

3 *State v. McGraw*, 19 Kan. App. 2d 1001, 1004 (1994) (undercover Alcohol Beverage Control agent investigating nightclub payed for and received four lap dances, during which he fondled and kissed dancer).

4 *State v. Ladd*, No. 94,383, 2006 WL 1379645 at *1 (Kan. App. May 19, 2006) (detective posed online as promiscuous 13-year-old girl in chatroom titled "Preteen Girls Sucking Men Off").

5 *United States v. Diggs*, 8 F.3d 1520, 1522 (10th Cir. 1993) (Sedgwick County Sheriff's Department detective and Wichita Police Department chemist made thousands of dollars worth of crack cocaine to sell in undercover sting operation). *See also id.* at 1524-25 (listing cases involving wide range of questionable behavior engaged in or promoted by police during undercover operations).

6 Fred E. Inbau, *et al.*, Criminal Interrogations and Confessions 270 (5th ed. 2011) (but cautioning that "it is a risky technique to employ").

7 *See, e.g., State v. Stone*, 291 Kan. 13, 16 (2010) (detective falsely told suspected sex offender that his semen was found on the complainant's pajama top); *State v. Swanigan*, 279 Kan. 18, 25 (2005) (lead investigator in armed-robbery case falsely told suspect that his fingerprints were at the scene "so he would think that his fingerprints were there" and "give me an admission"); *State v. Wakefield*, 267 Kan. 116, 123 (1999) (officers falsely told suspect that they had information and evidence implicating suspect in murder).

8 *See* Melanie D. Wilson, *An Exclusionary Rule for Police Lies*, 47 Am. Crim. L. Rev. 1, 2-15 (2010) (noting that "credible reports of police lies are common," and cataloging evidence that police lie); The Cato Institute's National Police Misconduct Reporting Project, http://www.policemisconduct.net/ (last visited May 23, 2012) (collecting credible stories of police misconduct, including police lies under oath).

9 Sworn lies by Kansas law-enforcement officers within just the past five years have been documented in at least the following cases: *United States v. Ibarra*, ___ F. Supp. 2d ___, 2012 WL 506572 at *2 (D. Kan. 2012) (granting suppression motion and denying government's motion for reconsideration of Kansas Highway Patrol trooper's credibility; finding trooper's testimony not credible based on "his demeanor, nonverbal behavior, mannerisms, tone, and inflection . . . combined with the content of the testimony"); *United States v. Murphy*, 778 F. Supp. 2d 237, 244-45 (N.D. N.Y. 2011) (suppressing evidence found during traffic stop in Kansas; discounting Kansas Highway Patrol trooper's testimony in light of "overwhelming physical evidence" to the contrary; describing part of trooper's testimony in one-word sentence: "Impossible."); *Bowling v. United States*, 740 F. Supp. 2d 1240, 1257-59, 1262 n.75 (D. Kan. 2000) (finding for plaintiff in police-brutality suit involving federal DEA agents; concluding that key agent's testimony was "not credible" as to multiple aspects of case, and that "a string of [state and federal] law enforcement witnesses in this case either testified falsely or through omission, in a way that did not represent the entirety of what the three federal agents did on the day in question"); *United States v. Maldonado*, 614 F. Supp. 2d 1179, 1183 (D. Kan. 2009) (granting suppression motion after finding Wichita police officers' testimony about basis for traffic stop inconsistent, unsupported by other evidence, and "simply not credible"); *State v. Hodge*, No. 102, 542, 2010 WL 597022 at *2-3 (Kan. App. Feb. 12, 2010) (affirming suppression order where Topeka police detective's sworn affidavit in support of search warrant "was not accurate and was misleading," and inaccuracies were "purposeful"); *State v. Landis*, 37 Kan. App. 3d 409, 415-16, 423 (2007) (finding that detective deliberately and in bad faith omitted material information from sworn affidavit in support of search warrant);Transcript of Suppression Hearing at 26, *State v. Morris*, No. 2010CR1271 (Douglas County, Kan., Dist. Ct. March 3, 2011) (judge stating to prosecutor, after corporal patrol supervisor with Douglas County Sheriff's office testified to basis for traffic stop of defendant: "I don't believe your witness's testimony, given the video and given the situation"); Memorandum Decision at 7, *Baconrind v. K.D.R.*, No. 2008-CV-10 (Chase County, Kan., Dist. Ct. Nov. 10, 2009) (finding that Kansas Highway Patrol trooper presented testimony "obviously contradictory to the evidence"; trooper's credibility was "sorely lacking" in light of videotape as well as trooper's "attitude and demeanor" while testifying). Older Kansas cases documenting police lies under oath include *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 387-88 (2001) (affirming ouster of Shawnee County Sheriff who, in two separate proceedings, willfully lied under oath to cover up deputy's theft of drugs from sheriff's office); *State v. Turner*, 259 Kan. 864, 865-69 (1995) (detailing Kansas state prosecutor's dismissal of criminal charges after discovering that Wichita police detective, Kansas DEA agent, and Kansas federal prosecutor had all agreed to present false statements in sworn affidavit in support of federal search warrant; noting district court finding that conduct was "illinformed, illconceived, and poorly executed attempt to protect a confidential informant"; further finding officers' later testimony about their conduct "not credible"); *United States v. Ruiz*, 822 F. Supp. 708, 713 (D. Kan. 1993) (suppressing evidence

where Sedgwick County Sheriff's detective's sworn affidavit in support of search warrant was nothing more than "an artfully constructed series of half-truths"); and *State v. Olson*, 11 Kan. App. 2d 485, 489-90, 493 (1986) (affirming suppression order where Topeka police detective made extensive false statements in sworn affidavit for search warrant to bolster credibility of informant; finding that "any attempt by the State to suggest Detective Listrom did not intend to mislead the court into issuing a warrant is discredited by Detective Listrom's own testimony. In addition, a review of the preliminary hearing transcript evidences a second attempt to obscure the truth and mislead the court.").

10 *See, e.g., Maldonado, supra* note 9.

11 *See, e.g., Bowling, supra* note 9; *Meneley, supra* note 9.

12 *State v. Castille*, No. 90,882, 2004 WL 1812669 at *2 (Kan. App. Aug. 13, 2004) (concluding that undercover KBI agent who solicited drugs from defendant neither entrapped him nor engaged in outrageous governmental conduct).

13 *State v. Wakefield*, 267 Kan. 116, 126-27 (1999) (concluding that police lies to homicide suspect did not render confession involuntary; noting district court's observation that "trickery, deceit, manipulation, et cetera, can all be effective tools of law enforcement").

14 Wilson, *supra* note 8 at 38 (distinguishing between lies that expose the truth and lies that distort the truth, and arguing for a modified exclusionary rule "to more effectively deter the unacceptable lies and expressly allow the acceptable ones").

15 Deborah Young, *Unnecessary Evil: Police Lying in Interrogations*, 28 Conn. L. Rev. 425, 463-64 (1996).

16 Tom R. Tyler, *et al.*, *Legitimacy and Deterrence Effects in Counterterrorism: A Study of Muslim Americans*, 44 L. & Soc. Rev. 365, 370 (2010).

17 *See, e.g.,* Tyler, *supra* note 16 *passim* (discussing empirical evidence demonstrating link between public perceptions of police and public cooperation with police); Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 Cal. L. Rev. 1513, 1525 (2002) (noting that "citizens reciprocate respectful treatment with cooperation and obedience and disrespectful treatment with resistance").

18 Edwin W. Kruisbergen, *et al.*, *Undercover Policing*, 51 Brit. J. Criminology 394, 409 (2011) (noting the "dramatic consequences, for both undercover agent and suspect," of deploying agent to build, and then betray, a "friendship" for intelligence-gathering purposes).

19 Young, *supra* note 15 at 468 & n.229, *quoting* Gary T. Marx, Undercover: Police Surveillance in America 96 (1988).

20 In contrast, for instance, law enforcement must receive judicial approval to install a wiretap—a tool that is available only after the police have exhausted or ruled out other means of investigation, including the judicially unmonitored secret infiltration of suspect groups by undercover agents. *See* 18 U.S.C. § 2518; *United States v. Foy*, 641 F.3d 455, 464 (10th Cir. 2011).

21 Elizabeth E. Joh, *Breaking the Law to Enforce It: Undercover Police Participation in Crime*, 62 Stan. L. Rev. 155, 181-83 (2009) (discussing the extreme secrecy of police undercover procedures, and noting that "the potential for abuse is greater when little or no public oversight is available to weigh in upon police decision making").

22 Young, *supra* note 15 at 461 & n.205; *see also* Brandon L. Garrett, Convicting the Innocent 18-23 (2011) (discussing DNA exonerations of 40 innocents who falsely confessed, many in response to police lies); Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 Fordham Urb. L.J. 791, 794, 828-31 (2006) (explaining that "interrogation practices in which police misrepresent evidence against suspects can and do lead to false confessions and wrongful convictions"; discussing studies of false confessions).

23 David K. Shipler, *Terrorist Plots, Hatched by the F.B.I.*, N.Y. Times, April 28, 2012, at SR4 (describing government's undercover conversion of ambivalent, incompetent, low-level drug dealer into would-be terrorist; questioning whether "cultivating potential terrorists [is] the best use of the manpower designed to find real ones"); Richard H. McAdams, *The Political Economy of Entrapment*, 96 J. Crim. L. & Criminology 107, 110 (2005) (explaining that, "[d]espite conventional wisdom, the case for prohibition [of undercover tactics] is not trivial"; discussing scandals and costs associated with such tactics).

24 Kruisbergen, *supra* note 18 at 395-96 (noting that in "postwar Europe, undercover methods were initially discredited, as a result of the intensive use the . . . Third Reich and the Communist Soviet Union had been making of government espionage against their own populations"; explaining that the American DEA exported undercover drug stings to Europe); McAdams, *supra* note 23 at 110 (observing that "twentyfive years ago, most liberal democracies were . . . skeptical of undercover operations—particularly the idea that police may commit criminal acts as part of such operations").

25 Kruisbergen, *id*. at 407-08.

26 Young, *supra* note 15 at 471-75 (explaining at length that "[t]he continued acceptance of police lying is based on the long practice of police deception and an unsubstantiated belief that such lying is necessary for successful prosecutions").

27 *See* McAdams, *supra* note 23 at 113.

28 Young, *supra* note 15 at 477.

29 *See, e.g., State v. Bratton*, No. 99,521, 2009 WL 4639504 at *4 (Kan. App. Dec. 4, 2009) ("Research reveals no Kansas case . . . where the [outrageousgovernmentalconduct] defense has actually prevailed.").

30 *State v. Harris*, 293 Kan. 798, 811 (2012) (listing cases in which confessions were found voluntary despite police lies to the confessor). *But see Stone*, *supra* note 7 at 32-33 (finding confession involuntary based on totality of circumstances, including police lies); *Swanigan*, *supra* note 7 at 39 (same); *United States v. Harrison*, 639 F.3d 1273 (10th Cir. 2011) (finding consent to search apartment involuntary where ATF agent falsely informed resident that there might be bombs planted in the apartment).

31 *See* Young, *supra* note 15 at 477 (encouraging courts to use the exclusionary rule to eliminate police lying; observing that "[t]he current voluntariness standard is flexible enough for courts to exclude confessions obtained with police lying, rather than just voicing disapproval of police lying"); McAdams, *supra* note 23 at 165 (discussing deterrent effect of entrapment defense: "the entrapment defense improves matters by removing the law enforcement gain from overzealous or wasteful sting operations").

32 *See United States v. Wilkinson*, 633 F.3d 938, 943 (10th Cir. 2011) (agreeing that, where

officers conducted pretextual traffic stop in order to search for drugs, district court could consider officers' motivations in assessing credibility).

33 *See State v. Madkins*, 42 Kan. App. 2d 955, 963-70 (2009) (assuming propriety of voir dire to test juror opinion on police credibility; finding court did not commit reversible error by limiting cumulative police-credibility questions under facts of case); *see also* Daniel E. Monnat and Paige A. Nichols, *Legal Prescriptions for Diagnosing Bias During Voir Dire in Kansas Criminal Cases*, 30 J. Kan. Ass'n for Justice 12 (2008) (discussing authority to probe for juror bias during voir dire).

34 Specific instances of dishonesty are relevant and admissible to prove the lying officer's bias and motive to testify against the defendant. *See State v. King*, 293 Kan. 1057, 274 P.3d 599, 605-07 (2012); *State v. Scott*, 39 Kan. App. 2d 49, 5560 (2008).

35 *Cf. Commonwealth v. Woodbine*, 964 N.E.2d 956, 972 (Mass. 2012) (court should have given cautionary instruction regarding police credibility as to confession where officer strategically chose to record only one part of two-stage interrogation); *Paine v. City of Lompoc*, 160 F.3d 562, 564 (9th Cir. 1998) (finding no error in restriction of voir dire on police credibility where judge instructed jurors that "testimony of police officers was entitled to no special deference, should not be believed merely because 'they're the police department,' and should be subject to the same testing and examination by the jury as anyone else's testimony"), *disagreed with by Madkins*, *supra* note 33 at 968 ("we agree . . . that an instruction to the jury *during* trial that admonishes them to objectively consider the evidence is an invalid substitute for proper voir dire questioning *before* trial regarding personal bias [assuming police officer credibility]").

36 *See* PIK Crim. 3d 52.18; PIK Crim. 3d 52.18-A.

37 Wilson, *supra* note 8 at 20.

38 Young, *supra* note 15 at 465; *see also Ibarra*, *supra* note 9 at *2 (rejecting government's plea for court to reconsider credibility findings regarding trooper: "the court does not believe that it would be just to change its evaluation based on the impact the finding may have on the government or [the trooper] in future prosecutions").

39 SB No. 175 (2011 Kansas legislative session).

40 Fiscal Note for SB 175 (Feb. 25, 2011).

41 Some sworn police lies have only been uncovered in Kansas thanks to the existence of videotapes that contradicted the officer's testimony. *See, e.g. Morris and Baconrind*, *supra* note 9.

42 Joshua A. Tepfer, *et al.*, *Convenient Scapegoats: Juvenile Confessions and Exculpatory DNA in Cook County, Illinois*, 18 Cardozo J.L. & Gender 631, n.13 (2012).

43 Thomas P. Sullivan, Police Experiences with Recording Custodial Interrogations 6 (Northwestern University School of Law Center on Wrongful Convictions 2004).

44 *United States v. Jones*, ___ U.S. ___, 132 S.Ct. 945 (2012).

45 *Id.*, 132 S.Ct. at 950 n.3.

46 *See id. passim* (majority and concurring opinions).