

the Springfield Police to confirm this went unanswered. A KVAL news story from 2008 ran a photo of Det. Robert Conrad, and Owen says it appears to be the same man, but KVAL did not give permission for the photo to run with this story, citing an adversarial relationship in the past with the police (though you can check it out for yourself at <http://wkly.ws/6r>).

“Who is going to trust law enforcement if it is known that they commonly lie to your face? That tactic might be legal, but it is not ultimately effective,” Owen says.

Unfortunately for Owen and the rest of us, attorney Lauren Regan of the Civil Liberties Defense Center says that police officer lying “happens all the time.”

The most textbook example of this, she says, is that “controlled buy,” where the officer, pretending to buy or sell drugs, is asked “You’re not a cop, right?” or “You’re not wearing a wire, right?” Contrary to the beliefs of anyone from sex workers to small time drug buyers to pretty much everyone else *EW* asked, officers don’t have to answer truthfully — if they did, undercover operations would never work, and *Law and Order* would have a lot fewer episodes. “The cop can legally say ‘I’d never do that. I hate pigs,’ in order to investigate that crime,” Regan says.

“Police officers are even allowed to partake, if necessary,” she says, “Smoke it, snort it, do whatever they need to do to remain undercover.”

Activists, she says, also run into the lying cop situation. Though in Owen’s case, the group was followed and filmed by a possible plainclothes officer, Regan says a bigger problem is when the cops try to stir up the protest. “You’ve got cops on the street at protests acting as agent-provocateurs, attempting to incite the crowd to do things that the crowd would not do otherwise.”

For instance an agent-provocateur might say, “Let’s go break this window,” Regan says. “Then a bunch of youngsters are running after some guy to break a window and it turns out that was a police officer looking to shut down the protest or escalate their response.”

Technically officers can’t “entrap” a citizen; however, according to *American Jurisprudence*, “Deception is necessary at times to accomplish the mission of police officers and does not by itself violate constitutional principles.”

Entrapment, however, Regan says, is difficult to prove. “You have to prove that the person basically had no propensity to do what he was entrapped into doing to begin with.” So those kids at the protest inspired to break windows by the agent-provocateur would have to prove that they would never had done that were it not for the cop egging them on. “Entrapment is viewed as a very difficult defense to assert,” Regan says.

LOOSE WITH THE TRUTH

Former Eugene activist Josh Schlossberg says he has run up against instances where local cops have taken liberties with honesty. He filed a complaint against officer Bill Solesbee, Police Chief Pete Kerns and the City of Eugene on Jan. 14, alleging that not only was he injured when Solesbee threw him to the ground during an arrest, but that the arrest was false and violated Schlossberg’s civil liberties. Schlossberg says Solesbee falsely accused him of breaking the law and used that lie to arrest him.

Schlossberg was in front of Umpqua Bank handing out pamphlets calling attention to board chairman Allyn Ford’s practices of using aerial pesticide spraying on land logged by his company, Roseburg Forest Products, Schlossberg says, when he was approached by Officer Solesbee. He says he told the officer he had a video camera and was recording the interaction. Solesbee told Schlossberg, he alleges, that he could not have his table on the sidewalk and that he could not remain stationary on the sidewalk, falsely telling him that he could not stay on the sidewalk without a permit. “You don’t have a permit to do this; you can’t do this,” Solesbee said, according to the complaint.

The officer then asked if Schlossberg was recording the conversation; Schlossberg said he was and alleges the officer then said, “Gimme that, that’s evidence. Gimme that,” then charged him and grabbed the camera. Up until then Schlossberg was videotaping the interaction.

Solesbee knocked Schlossberg to the ground, put his knee on his neck and arrested him, according to the complaint. Schlossberg says he had several injuries at the time and suffers neck pain to this day.

Schlossberg says, “He lied. He said I was surreptitiously videotaping, when it was right there in front of my chest. He said I resisted arrest. I did nothing. I didn’t move.”

Schlossberg was charged with two misdemeanors, “intercepting communications” and “resisting arrest,” and he spent five hours at Lane County Jail. The charges were later dropped.

Schlossberg says Solesbee recognized him as one of the witnesses who spoke out against the Tasing of Ian Van Ornum in 2008, which Solesbee participated in, and believes Solesbee targeted him in retaliation.

Schlossberg filed a complaint with the police auditor, but EPD Chief Pete Kerns later exonerated officer Solesbee. Schlossberg’s lawsuit alleges that Solesbee falsified police reports and attempted to file unwarranted charges against him.

“My paranoid fantasies are not all that far off. They do this regularly and they get away with it,” Schlossberg says.

CHEATER PANTS

Once officers have a suspect under arrest, they are still allowed to lie in order to get a conviction, according to case law. Regan says the classic situation is when an officer arrests several people, gets them in separate rooms and lies to them. Thought that was just bad cop drama on TV? Nope. Regan says this is something Eugene’s criminal defense attorneys see all the time.

“Police are allowed to say anything at all in order to further their investigation,” she says.

If he has information, but not enough to make the case, she says, an officer will tell each of the suspects that the information came from the other one, and the suspect thinks “Oh shit, well no one would know that except my co-conspirator. They rolled on me, so I’m going to roll on them!”

Threatening things, she says, is another tactic. “A really common one I see is the police find a little tiny marijuana garden and say ‘I’m going to take your kids away.’”

Regan says the police don’t have the power to take someone’s children away, and “Just the simple fact that someone is growing marijuana doesn’t render them unfit parents so that their parental rights are terminated.”

“Of course it’s a powerful threat,” she says, when the parent being threatened is terrified of losing her children.

Regan says that another one Eugene criminal attorneys see, especially with juveniles, is telling them: “If you tell us what you know, then you won’t go to jail,” or “If you tell us what you know, we won’t charge you with everything,” or “We won’t charge you with a felony.”

“Absolutely false,” she says. It’s not the cops who decide on the charges in the end, it’s the prosecutors and the district attorney.

Any promise a police officer makes to you is completely non-binding, Regan warns. She says often there are no witnesses to the promise, and the officer can make false promises in the course of the investigation in order to further that investigation.

Officers can also lie to suspects and tell them they found their fingerprints at the crime scene. What the officer cannot do is actually plant fingerprints at the scene; that’s entrapment and tampering with evidence, and thus illegal.

TELL IT TO THE JUDGE

Court cases have gone back and forth on the officer-lying issue. Basically, when it comes to a confession, the courts draw a line between two kinds of lying: lies that relate to the suspect’s connection to the crime, such as “We found your fingerprints,” versus lies that mess with a suspect’s ability to rationally choose to confess.

In other words, telling you that your fingerprints were at the crime scene would only persuade you to confess if you knew that there was a possibility that was true. A rational, non-guilty person wouldn’t be persuaded by that, the reasoning goes. A person of normal intelligence wouldn’t admit to a crime he or she didn’t commit.

Telling a mother she will lose her children if she doesn’t confess, as in the case *Lynn v. Illinois*, could be construed as coercive, and in that case the lying was found to be illegal. A mother’s fear could lead her to make the irrational decision to confess to a crime she didn’t commit.

One of leading precedent-setting cases on letting officers legally lie, *Frazier v. Cupp*, a murder case, took place in Oregon. A police officer lied to a suspect during an interrogation, telling him his cousin had already confessed and sympathetically implied the victim had it coming for making homosexual advances on the suspect. At one point, the suspect expressed interest in getting a lawyer, and the officer told him, “You can’t be in any more trouble than you are in now,” and the interrogation continued.

The suspect appealed the murder conviction. As part of his appeal, he said his confession was involuntary, but the Supreme Court ruled in 1969 that the officer’s misrepresentations were not enough to make the confession inadmissible.

Finally, there’s “testilying” — when officers lie in court. That is illegal, but it happens, as does falsifying police reports. A 1990s study of New York police officers, called the Mollen Commission, found that when officers illegally stopped and searched a car because they believed it had drugs or guns, the officers would lie in their police reports and under oath that the car had actually run a red light or some other violation and that they just happened to see the drugs or gun when they pulled it over.

The Mollen Commission also found that the police had no interest in fixing the corruption and that “no one seemed to care.”

So in a world where the police can and do lie, what should you do if you’re accused of a crime you didn’t commit? Here are a couple of things *EW* gleaned from this investigation: Remember, asking “Are you a cop?” is not going to get you a real answer whether you’re buying pot or plotting a treesit. If you’re a protester, have someone record your event. It’s legal to videotape the cops, as long as they know it’s happening. If you’re arrested, stay calm and wait until you have an attorney present to talk. It’s not illegal to invoke the Fifth Amendment. Remember, this much about cop shows is true: You have the right to remain silent.

EW

‘WE DO NOT DISCUSS INTERVIEW TACTICS BECAUSE THAT MIGHT JEOPARDIZE CASES.’

— MELINDA
KLETZOCK,
Eugene Police