Undercover Reporting
Hamill, Pete, Kroeger, Brooke

Published by Northwestern University Press

Hamill, Pete and Brooke Kroeger.
Undercover Reporting: The Truth About Deception.
Project MUSE. muse.jhu.edu/book/18273.

For additional information about this book
https://muse.jhu.edu/book/18273

For content related to this chapter
https://muse.jhu.edu/related_content?type=book&id=723794
In 2008, the New Press published *Submersion Journalism*, a collection of fifteen relatively contemporaneous articles from *Harper’s* magazine, compiled and edited by Bill Wasik, then one of the magazine’s longtime senior editors and an advocate of the technique. As described in the book’s table of contents, the articles, many reported undercover, ranged across subjects, from politics to violence to illness to vice to arts to the confessions of war.¹ Among the pieces selected for inclusion were Jeff Sharlet’s “Jesus Plus Nothing”; Wells Tower’s foray into campaigning with the Florida Republications for the reelection of George Bush in 2004 (there would be several similar efforts during the Obama–Clinton presidential primary campaign season of 2007);² Barbara Ehrenreich’s personal encounter with the funded fight against breast cancer movement; Kristopher A. Garin’s efforts to buy a Ukrainian mail-order bride; Jake Silverstein’s participation in a poetry slam; and Willem Marx’s summer as a military propagandist in Iraq. If Ehrenreich’s *Nickle and Dimed* hadn’t become a cottage industry all its own, one could imagine it would also have been included, as could any of the dozens of other pieces of this ilk that...
Harper’s published in this century, the last century, or the century before. Harper’s is and has always been “heart” undercover.

Prominent among the selections was the undercover reportage of 2007 that caused the loudest cymbal clash in the profession since Food Lion. It was the work of the magazine’s then Washington editor, Ken Silverstein, who had been writing for Harper’s as a contributing editor going back to the early 1990s. In between, he became a reporter for the Los Angeles Times, where the questionable activities of the city’s most powerful lobbyists had also been a leitmotif of his reporting from Washington. By 2007, more than a dozen lengthy takeouts on this or closely related themes had appeared under his byline in one publication or the other. Yet much to Silverstein’s disappointment, none of these pieces had generated significant interest, considering the extent of the influence the most powerful firms were exerting, however quietly, in the public sphere.3

In consultation with Wasik and the magazine’s then editor, Roger Hodge, Silverstein began to dream up ways of drawing broader attention to the ever more powerful band of Washington lobbyists and the means they and their firms had developed for promoting even the most thuggish of client-states, for lobbying policymakers, for putting together conferences and Congressional junkets, for getting op-ed pieces placed that featured the work of knowledgeable, prominent academics or experts from prestigious think tanks. Silverstein’s first thought was to expose the system of winning earmarks by dummying up a phony firm to win one with the help of a powerful lobbyist, but he ultimately abandoned that plan. It would have meant a huge pileup of fees owed to the lobbying firm as the bill made its way through Congress, not to mention the waste of congressional time and resources for a phantom endeavor. “Deceitfully seeking money for a genuinely important
use,” he later wrote, raised both ethical and legal issues too thorny to surmount.

Silverstein willfully ignored what he perceived to be the disfavor into which undercover reporting had fallen, at least among the Washington-based reporters he knew. In his view, the disdain could be “traced in part to the transformation of journalism from a profession for cynical, underpaid gumshoe reporters into (in Washington at least) a highbrow occupation for opinion-mongers, Sunday talk show yakkers, and social climbers.” To this group, he considered himself an outsider. He soon came up with another plan: to pose as a representative of a “small, mysterious overseas firm with a major financial stake in the country in question” and see what interest top Washington lobbying firms might have in representing a dictatorial government known for its abuses of human rights. He chose Turkmenistan.

What Silverstein wanted to know, as he later explained in his book about the sting, was “just how low would a well-heeled Washington lobbying firm sink” to represent a pariah regime? What sort of promises do the firms make to win the contracts? How closely do they scrutinize potential clients and what means do they use for orchestrating support for these clients? How visible is their hand in what Congress and the public can see? How much of this, he wondered, could thus be subject to more public scrutiny and debate? But how would it be possible to find all that out?

He set up virtual shop with little more than a new set of calling cards in the name of not Ken Silverstein but Kenneth Case, a rudimentary website, and a London-based cellular telephone number. Wasik and Hodge knew that Silverstein’s use of the method would “take heat,” but they were willing to authorize the project anyway.

Despite the additional risk of exposure, Silverstein decided to
hide a tiny tape recorder in the inside pocket of his expensive new suit jacket, both to document the conversations should the need for a record ever arise, and also to have a verbatim account of what transpired, so as not to have to rely on memory or his notes in shorthand when it came time to write or if he had to corroborate his reporting.

He and the editors also made a decision that left him vulnerable to criticism. He did not call the firms for comment before the story ran. Silverstein later explained that given the magazine’s lead time to publication of more than six weeks, the risk was simply too great that the firms would use the lag to disseminate an alternative spin before his story even had a chance to get into print. “There is no way to do anything for the magazine at the last minute,” he said. “And editorially, we decided there wasn’t a lot to be gained by calling them. We could have put something on the Web. We could have called and posted a comment online. I acknowledge that you can see this as self-serving. But what was I going to ask them precisely? What was I going to gain? It was an undercover story. You either like that, or you don’t.”

By mid-June, the article appeared in the magazine’s July 2007 issue. “Their Men in Washington: Undercover with D.C.’s Lobbyists for Hire,” brought the attention on the lobbyists and their moral acrobatics that Silverstein so long had sought. Reaction to the piece also focused a good deal of attention on Silverstein himself and the lengths he had gone to expose the lengths lobbyists would go to land lucrative deals with questionable clients. He was braced for some negative response to his methodology from his colleagues in the profession and had a clear sense beforehand that undercover reporting “in polite journalism circles is generally frowned upon—at least it seems that way to me.” He also anticipated the harsh reaction he indeed received from the lobbyists he
had named. But the article also provoked far more positive attention than he expected from readers and from the larger media establishment. For the next month, Silverstein found himself fielding questions and comments about what he had done. These mostly positive reverberations echoed out through the media-centric blogosphere. Silverstein did have detractors. Both Howard Kurtz, then media columnist for the *Washington Post*, and Mark Lisheron, writing for the *American Journalism Review*, were among the few media writers to go on the attack. Kurtz quoted Silverstein as saying he was comfortable weighing his ethics against those of a firm that would agree to represent and whitewash the record of a Stalinist dictatorship, but Kurtz also cited the controversies emanating from Mirage and Food Lion to assert that the undercover tradition had faded in recent years because “no matter how good the story, lying to get it raises as many questions about journalists as their subjects.”

Silverstein fired back, both on his *Harper’s* blog and in an op-ed piece for the *Los Angeles Times*, defending his use of the questionable tactics that enabled him to “gain an inside glimpse into a secretive culture of professional spinners only by lying myself.” He said he disclosed his deceptions clearly in the resulting piece—in contrast to the lobbyists he met who “boasted of how they were able to fly under the radar screen in seeking to shape U.S. foreign policy.” Readers uncomfortable with his methods, he said, were free to dismiss his findings. Could he have accomplished the same end without the subterfuge? “Impossible,” he said.

Silverstein was given a number of national platforms from which to explain his actions. NPR programs featured him in interviews, and Bill Moyers invited him onto his PBS program, *Bill Moyers Journal*. Moyers, in his introduction to the piece, called Washington “an occupied city, a company town, whose population of lobbyists
constitute the permanent government.”17 He said the number of lobbyists registered to do business in Washington had more than doubled in the past six years to twenty-five lobbyists for every member of Congress18 and that Silverstein would be a tour guide for his viewers into the inner workings of their world.

Moyers also asked readers to respond to questions in an online reader poll on his blog, in which he asked, “Do you think undercover investigations like those used in Ken Silverstein’s recent report compromise journalistic credibility?” Readers overwhelmingly responded “no.”19 In a count taken in 2007 shortly after the program aired, 88 percent of respondents expressed support for the practice.

Nevertheless, in the October 2007 issue of American Journalism Review, Lisheron focused on the way Kurtz had reignited the “longstanding and unresolved debate about the ethics of undercover journalism.”20 Lisheron posed the issue much as Kurtz had posed it several months earlier and then asked if journalists lying or misrepresenting themselves was really the way to restore public faith in the newsgathering process—even if, as Silverstein said, people who doubt the efficacy of the undercover method were free to dismiss the findings. “But how much trust should one place in a journalist who lies or the publication that endorses such behavior?” Lisheron asked. Further, he said, “If lying is a superior tool in some instances, what is to stop reporters from using it indiscriminately? In Silverstein’s world, it is left to the reader to determine whether the lying is being done in the service of the truth or self-interest.”21

Lisheron acknowledged Silverstein’s many supporters and the hundreds of emails he received praising both the story and the sting. He also cited a column on the subject by Edward Wasserman that appeared both in the Miami Herald and on Wasserman’s
personal blog. In it, Wasserman questioned Silverstein’s approach and acknowledged his respect for those who opposed it. He also repeated a prevailing impression that no one goes undercover any longer, saying, “There’s something anachronistic about it, as if reporters suddenly started using pay telephones and Remington typewriters. That’s not how we get news nowadays.” But then Wasserman zigzagged. He asked his readers if Silverstein was the right trickster for them to be worried about: If it is right to demand that public deliberations be held in public view, “don’t we need to challenge the sanctity of backroom discussions that are intended to have no less impact than a mere public hearing? Trickery has its costs, but they need to be weighed against the harm of keeping those backrooms locked.” Four years later, Wasserman replied by email to a question put to him after his column on the James O’Keefe NPR sting appeared in the *Miami Herald*. He was asked if his condemnation of the O’Keefe exposé represented his change of heart on the allowability of deceptive techniques more generally, as he seemed to suggest in the earlier column. He replied that he was “indeed tougher” on deception in his 2011 column than he had been in the past, but that

I had tried to be clear in the Silverstein affair that such entrapment is highly problematic ethically. You are tricking people, robbing them of their time, denying them the fundamental right to choose their words in view of whom they’re talking to, setting them up to look bad. Of course that’s all wrong. Nevertheless, I do also believe there are important realities that cannot be forced into light without engaging in such techniques. Here, I think, the SPJ’s [Society of Professional Journalists’] rules work, and *Harper’s*, to me, met that test. The new era ignores the obligation to subject such work to any discernible test whatsoever.
Wasserman, incidentally, made a similar appeal in 2005 for a more nuanced evaluation of the appropriateness of the use of subterfuge. This was in response to the *Spokane Spokesman-Review’s* use of a computer expert in an online sting to support its allegation that the mayor “had used positions of public trust—as a sheriff’s deputy, Boy Scout leader, and powerful politician—to develop sexual relationships with boys and young men.”

At the time, Wasserman took issue with the reaction against the Spokane sting of some major news executives, notably the then editor of the *Philadelphia Inquirer*, Amanda Bennett. “I don’t permit deception,” she told a reporter for *Editor & Publisher*. “Undercover is a method of the past.” To this, he hotly disagreed, pointing to the Spokane investigation as a case in point. He then responded more expansively in his *Miami Herald* column to the larger question of the method’s appropriateness. To his mind, the “affair” had “disquieting elements,” but deception was not one of them. The newspaper’s deception had been well thought out and fair, he said. “I’m bothered more by the possibility that such stories are being eyed by journalists elsewhere and ignored because editors despise the reporting that the stories might require.”

Responding to the Turkmenistan sting, Bob Steele, the Poynter Institute’s resident ethicist, made a similar point. Saying he was no “absolutist on these matters of truth versus lies,” he believed that there were “rare, exceptional cases—when deception may be justified, providing the reporter and the publication meet multiple thresholds.” Silverstein, he said, had provided “yeasty material to renew the debate on when, if ever, deception is justified in pursuit of truth.”

Kurtz persisted in his opposition, telling Lisheron that he still could not grasp, as a matter of fairness, why Silverstein did not seek comment from the lobbyists before *Harper’s* published his
Looking back several years later to that summer of renewed consternation over the ethics of undercover reporting, neither Spokane nor Turkmenistan would become the new Food Lion or the new Mirage. Nor did Ian Murphy’s prank call to the governor of Wisconsin during a major labor dispute with the state’s union of public employees or James O’Keefe’s NPR sting, both in winter 2011.

The impact of these episodes on the way journalists view undercover reporting has been transitory at best. Silverstein, in a 2010 interview for this book, said that he was told that one of the firms he contacted had turned down a contract to represent Pakistan and he wondered if his story might have influenced the decision. He hoped to spur Congress to push for reform legislation to address the reach of foreign lobbying, but that was not to be. The piece’s most far-reaching impact came courtesy of Gary Trudeau who riffed off the article in a series for his Doonesbury comic strip. “I have to say that made me pretty happy,” Silverstein said. “It’s not that it changed the world, but it does count for something. That’s a pretty mass audience.” Silverstein, for his part, did not drop the subject; in subsequent as in prior years, he revisited the lobbyist theme several times, albeit conventionally, on the Washington blog he wrote for Harper’s website.

Silverstein subtitled the last chapter of his book “Aftermath: The Death of Undercover Reporting,” a premature pronouncement, to be sure. Since 2008, when Turkmeniscam was published, I count at least forty undercover efforts of significant enough virtue to be listed. Witness Harper’s, for one. Undaunted by the Turkmenistan blowback, it published Matthieu Aikins’s article about his cloaked
and long-bearded stint as a supposed member of the Afghani border police in December 2009, a report that two months later was being handed to members of the entering class of U.S. intelligence analysts to acquaint them with a situation in the key border town of Spin Boldak, along the drug-smuggling route of southern Afghanistan. Between Aikins’s seventy-five hundred words in a magazine and a six-page classified military intelligence report, there was no contest; the agents were meant to conclude that Aikins’s report was more useful. With mainstream journalists, it is fair to say the practice of reporting undercover has continued to thrive. Not even its pulse has slowed.

One distinguishing characteristic of Silverstein’s ruse that aligns it, at least to some extent, with the excesses of Food Lion is the issue of overt misrepresentation, the deliberate, verbalized or written act with the intention to mislead. In this case, the target was the lobbying firms via Silverstein’s use of the additional cell phone number, the false identity, the dummy website, and the printed calling cards; in other words, the lies. In our interview, I asked Silverstein to compare his approach to the lengths that latter-day prize-winners for the Wall Street Journal, the New York Times, and the Washington Post had gone to in efforts to avoid the need to speak or write a lie or to overtly misrepresent what they were doing—if not in actions, at least in words.

He pondered the notion, but only for a moment. Clearly, he said, if the lobbyists had gotten even a sniff of what he was up to, and had called him on it, he would have acknowledged his actions and aborted the project immediately, much as Horwitz described being prepared to do for his chicken-processing story. But to Silverstein, the very idea of developing an elaborate subterfuge to cover a story based on subterfuge sounded preposterous. “That’s a ridiculous distinction,” he said. “If editors want to feel better,
fine. But it’s a totally ridiculous distinction. The whole pretense of this was that it was an undercover sting,” he said. “We lied. I misrepresented myself. I think the piece was legitimate. If others don’t, that’s fine. We didn’t think about how we could make this legitimate, how we could make this something that was not quite a lie. It’s under-fucking-cover reporting! What’s the point of trying to save your ass? That’s an outrage. I think that’s outrageous. To make it appear that you’ve been fully forthcoming? It’s either you do it or you don’t. If you do, what’s the point of making up deceptions to justify your deception?”36 (Bill Kovach and Tom Rosenstiel expressly allow for journalistic masquerade under tight controls37 but they also give the lie to another common form of journalistic deception, the “unprincipled, dishonest, and biased”38 technique of selecting sources to express a reporter’s own point of view but then using a neutral voice to make the information seem objective. Journalism’s arbiters are not known to have prescribed any concrete actions against this common practice.)

Indeed, Silverstein’s point is a key one: Where is the honor in covering a deception with yet another deception to justify an effort to accomplish a public good? What is the sense in going to such convoluted lengths to avoid what amounts only to avoidance of the letter of the lie?

This book has sought to demonstrate not only the indisputable staying power of undercover reporting, and to argue on the strength of the historical record that despite the acknowledged ethical complications and compromises it necessitates, despite its misuses, its importance and value as a journalistic form should not be in doubt. Few narrative strategies are as effective at exposing wrong, engaging public interest, and generating action.

True, there have been missteps. Yet much of the criticism leveled
at undercover reporting applies to one degree or another across journalism’s many and varied forms. On the whole, because of the careful consideration, long-term planning, and expense that serious undercover efforts require, the misfires may be colossal when they happen, but they appear to happen less often than in other types of reporting. Of the hundreds upon hundreds of examples reviewed for this project, the real embarrassments would fill only a child’s hand. Minor successes and major triumphs outpace the embarrassments by the dozens. Of all the journalistic practices in need of reform or rejection, the indignation undercover reporting has drawn in response to its blatant use—but not to its just-as-frequent unstated use—seems to me to be wildly misplaced.

True, the unique performance aspect of undercover reporting is a strength as powerful as it is a potential weakness. The frequent reliance on the reporter persona can produce in readers a vicarious, even voyeuristic thrill that brings an issue alive. And yet putting the writer in the center of the narrative requires caution, for the risk is great, as John Hersey once warned in another context, that the writer can become more important than the subject he or she seeks to picture, allowing what matters most to recede into the backdrop, dissolving out of focus into something “fuzzy, vague, unrecognizable and false.”

There is also the pitfall of “improperly speaking for others,” as Philip Brian Harper has observed about cross-racial undercover narratives, making a point that easily can apply more broadly to other subject areas for which reporters have used disguise. His reflection raises another question: If reporting of this nature can result in no more than the portrayal of one reporter’s unique experience, rather than a true representation of the people or situation he or she hopes to convey, does value enough remain to justify the subterfuge? Do such performances invalidate the very information
they seek to reveal, the possibility of sharing those experiences widely, and a virtual forum for generating informed discussion about it? Is the form too limiting, is the picture it creates too distorted for it to achieve anything close to what the writer may have set out in earnest to convey? My question is, would we challenge an affecting, effective writer of fiction who seeks to reveal larger truths through specific fictional examples in a specific fictional narrative setting that may well be drawn from actual lives? We would not.

When undercover reporting is done well, when the method is deployed sparingly by exceptional reporters operating under strict and thoughtful editorial and ethical controls, the work soars. It performs journalism’s all-important watchdog or “audit” function. It can provide important, hard-to-get, difficult-to-penetrate information to a mass audience in a highly readable way. As a narrative device, it can be stunningly effective. The drama, the sense of theater, it lends to the journalistic enterprise not only can bring important issues to wider attention but it can sustain the attention it attracts and even catalyze reform, as all great storytelling can do.

It also reminds us of the importance of reaffirming the role of the journalist as outsider—but just as importantly, never as outlaw. It underscores the need for journalists to be in, but not of, the worlds they inhabit as reporters. Best practice and the prevailing consensus about journalism’s role in a democratic society require a higher level of personal remove than is often the case any longer. Essential is the detachment that allows one to point an accusing finger when necessary and to amass the evidence needed to support that charge, unencumbered by personal or social connections or ambitions. Necessary is the possibility to find out how people think and know and act, without the “middle filter,” as Anne Hull called the layer of spun fuzz between reality and its projection by
those with vested interests. Like journalism’s investigative counterparts in other disciplines and professions—ethnography and law enforcement come to mind—strict bounds must be placed on the ethically challengeable behavior such work at times requires; and reporters must be obliged to disclose the way they have gone about their reporting—and their editing—as part of their initial presentations, rather than in interviews or memoirs that often appear well after the fact. As part of their work, they should provide avenues of response to the targets of their investigations. But at the same time, undercover reporting needs much wider latitude of acceptance than currently provided for what the work sometimes obliges its reporters and producers to do.

As to undercover’s ethical conundrums, if navigating them were simple, they wouldn’t continue to be so perplexing. “You can’t lie” is the thick red line most often drawn between what is and what is not journalistically acceptable. To be sure, those three words seem to provide a fine and unambiguous place to begin. But as often as not, they have led to pretzel-like ethical contortions, elaborate work-arounds, and dubious bouts of self-justification—in other words more deception, as Silverstein put it, to cover the deception. To me, it is an effort to mislead all the same. Reporters so carefully constricted indeed do not lie. But what they do instead bears very little resemblance to truth, even though projecting an image of truthfulness is the point of these sometimes very elaborate machinations.

When is undercover the right course of action? The long-accepted starting points are still the right ones: when the subject at hand really warrants it, when the project has been considered carefully and thoughtfully reviewed first, and when there is no other way to get the information. I would suggest that the latter part of the formulation be amended to say, when there is no other
timely and equally effective means of getting and presenting the information. It is also critical that the work be undertaken with extreme care to avoid any unintended peripheral harm and that the actions involved be performed and explained transparently and fully within the bounds of law. Awful as it may sound, as awful as it does feel, deception for journalists, whether they work above board or undercover, is often just a given in the quest to change some systems or to get some wrongs righted, at least for a little while.