I. INTRODUCTION

Police departments across the country have embraced undercover policing in recent decades, and the explosion in its use has exposed the need for greater regulation of the process. The following story exemplifies this need. On September 29, 2013, motorcyclists from across New York City hopped onto their bikes and began riding towards the city’s center. As they traveled through Brooklyn and Queens, the group’s ranks swelled into the hundreds. The event, informally titled “Hollywood’s Block Party 2013,” is an annual ride that typically begins outside Manhattan and ends in the city center. Riders say the event is organized as a gathering to promote unity and peacefulness within the motorcycle community, but New York police see it as dangerous. Police lament that such rides “get larger every year and more rambunctious,” and the NYPD deployed officers at checkpoints around the city in an effort to keep the 2013 Block Party out of the city’s center.

The day of the 2013 ride, a group of participating motorcyclists approached the
Brooklyn Bridge and raced through a police checkpoint. As the group continued onto the West Side Highway, several slowed to block off the road in an attempt to prevent other vehicles from colliding with motorcycles. One of the those vehicles was the Range Rover driven by Alexian Lien, a Manhattan executive, who was joined in the car by his wife, Rosalyn Ng, and their two-year-old daughter. The motorcyclists claim Lien was weaving from side to side to get around the group, so they positioned themselves to isolate him from the other cars.

Christopher Cruz slowed his motorcycle to force Lien to stop, but the Range Rover struck his motorcycle from behind. The impact knocked Cruz to the ground, stopping traffic and instigating a violent chain of events. One biker’s GoPro camera captured the events, and the resulting video quickly spread around the Internet. Angered by the bump, nearby motorcyclists pounded on Lien’s Range Rover with their helmets and slashed his tires. Lien sped off, running over three bikers and leaving one with serious injuries.

The motorcyclists pursued Lien down the Henry Hudson Parkway for nearly two miles until they stopped the vehicle. With the Range Rover stationary, one biker, Robert Sims, ripped open the driver’s side door, but Lien peeled away, slamming the door as he accelerated.

Over the next thirteen blocks, Ng placed a panicked 9-1-1 call, reporting the Range Rover’s location and that the slashed tires had gone flat. Thirty motorcyclists caught up to the disabled vehicle, and several jumped off their bikes and began beating on the vehicle with their fists and helmets, breaking several windows. After one biker’s helmet smashed through the driver’s side window,
the attackers ripped Lien out of the vehicle and threw him to the ground. As Lien lay on the ground, one of the bikers beat him. As the group attacked Lien, one duo threatened Lien’s wife that she was “going to get it too.” In the absence of police action, nearby civilians eventually intervened to stop the attack.

Regardless of whether Lien or the motorcyclists should shoulder more blame, one troubling facet of the incident arose in the weeks following the attack: Wojciech Braszczok (pronounced VOY’-chek BRAZH’-ahk), a detective with the NYPD, was riding with the group that pursued and assaulted Lien. Braszczok is a Mohawk-wearing thirty-two-year-old from Long Island City, Queens, who has been an officer with the NYPD for ten years and an undercover officer for the last five. His principle undercover assignment had placed him deep undercover during the peak of the Occupy Wall Street movement; he “essentially lived like a protestor to provide information to the NYPD,” which required, among other actions, participation in demonstrations and meetings. Braszczok worked undercover in the NYPD’s Organized Crime Intelligence Division.

Little is known about Braszczok, except through his active social media presence. He used his Twitter account to further the appearance of his involvement in the Occupy movement, but the rest of his online activity was of a more narcissistic and unseemly nature. He used the handle “evovillen” on Twitter, Instagram, Photobucket, online forums, and online dating sites. His pages contained explicit photographs of many women, explicit photographs of himself,

21. Id.
26. Weiss, Biker Cop, supra note 25 (reporting that investigators are still unclear as to why Braszczok was riding with the motorcyclists on the day of the attack, but that some have proposed he was attempting to find another long-term undercover project for the NYPD).
28. Berry, supra note 27.
29. Id.
and photographs of his motorcycle and other vehicles. Not only did Braszczyk’s online presence depict him as a disreputable individual, it showed he was a careless police officer. For example, he had images of his personal vehicles plastered across webpages affiliated with his undercover identity and used the same online handle for both personal and undercover use. Additionally, Braszczyk listed “law enforcement” as his occupation on a dating site on which he used his “evovillen” handle, the same handle under which he posted items intended to support his appearance as a member of the Occupy movement. On another social media site, Braszczyk actually admitted to being a police officer while posting as “evovillen.” Braszczyk’s online activities portrayed a self-involved individual who lived and worked carelessly. These characteristics, along with his unnecessary participation in violent criminal activity, suggest Braszczyk may exemplify several psychological traits associated with or elicited by undercover work.

News of Braszczyk’s involvement did not break until well after the attack because he delayed reporting that he was on the ride, and when he finally admitted that he was, he initially claimed that he “was not at the scene when the driver got beat up.” However, according to prosecutors, Braszczyk punched out the back window on the Range Rover, exposing the backseat where the two-year-old was seated, kicked a door, and was altogether an “active participant” in the attack. Video evidence shows Braszczyk smashing the window but does not show him participating in the physical attack on Lien.

How did Braszczyk get himself into this situation, and why did he not stop the attack? Braszczyk claims to have been participating in the ride along with “other cops from [his] crew,” as part of the New Rochelle Front Line Soldiers, the motorcycle group whose emblem is embazoned on Braszczyk’s vest in the video footage. He originally justified his failure to act by claiming he did not have his gun and badge. He later supplemented this defense by citing the large number of people he would have had to single-handedly pacify, as well as his late arrival on

30. Id.
31. Id.
32. Id.; see also MacIntosh et al., supra note 24 (explaining that Braszczyk used close variations of the same screen name for real-life and undercover communications while working undercover on the Occupy movement).
34. Undercover work and its psychological effects will be discussed in the upcoming parts of the paper.
36. Id.
37. Prokupecz, supra note 23.
38. Jacobs, Biker Cop, supra note 35; Berry, supra note 27.
the scene.footnote{40} He also cited concern with blowing his cover as a reason for not intervening.footnote{41} Although undercover officers act “only in rare circumstances”footnote{42} if they see a crime being committed, none of the factors asserted by Braszczok would have prevented him from calling 9-1-1, an action he failed to take.footnote{43}

On October 11, 2013, a grand jury in Manhattan criminal court indicted eleven bikers for participating in the attack.footnote{44} Braszczok was charged with assault, gang assault, coercion, riot, and criminal mischief.footnote{45} Braszczok has already been formally suspended from the NYPD,footnote{46} but he has pled not guilty to the charges.footnote{47} Two NYPD officers, in addition to Braszczok, were also involved in the incident, and as many as six were riding with the motorcyclists.footnote{48}

Many questions about Braszczok’s involvement remain unanswered, but an exploration of the dramatic psychological effects of undercover work on the officers who perform it may help explain Braszczok’s character and actions. Part II will provide background on undercover policing and problems with its legitimacy; Part III will discuss the psychological impacts of undercover work on undercover officers and the systemic problems within officer selection, training, and guidelines that produce those impacts; and Part IV will address several potential

footnote{40} Id. Braszczok also claims that he was incited to finally act when Sims opened the Range Rover’s door, but he said Lien drove away before he could act. Id.

footnote{41} Weiss, NYPD Internal Affairs, supra note 13.


footnote{43} Weiss, NYPD Internal Affairs, supra note 13 (quoting a Manhattan Assistant District Attorney as claiming Braszczok “did nothing to stop [the attack], including not calling 911”).


footnote{45} Id.

footnote{46} Weiss, Biker Cop, supra note 25.

footnote{47} Jacobs, Biker Cop, supra note 35 (noting Braszczok was joined by co-defendants Clint Caldwell, James Kuehne, and Kaliq Douglas, all of whom pled not guilty). Plea bargains have been offered to most of the participants; Braszczok was originally offered three years in prison and three years of post-release monitoring. He has not publicly commented on the offer and merely covered his face as he left the court building. Jacobs, Biker Gang, supra note 9.

footnote{48} Weiss, NYPD Internal Affairs, supra note 13. One source noted that two detectives, one sergeant, and three police officers were either on the highway at the time of the confrontation or witnessed the confrontation. Murray Weiss, NYPD Investigating Role of 6 Cops at Biker Rally Where Driver Was Beaten, DNAINFO N.Y. (Oct. 4, 2013, 6:45 PM), http://www.dnainfo.com/new-york/20131004/washington-heights/nypd-investigating-role-of-6-cops-at-biker-rally-where-driver-was-beaten [hereinafter Weiss, NYPD Investigating]. One of the other two officers involved was an off-duty undercover narcotics officer named Samir Gonsalves, who was charged in the days following the incident. Sources say that another officer who came forward works in the Internal Affairs Bureau, which is responsible for investigating police officer misconduct. He could face a criminal charge for failing to intervene in the attack. Weiss, NYPD Internal Affairs, supra note 13. All six of the officers will likely face disciplinary action for failing to come forward immediately regarding their participation in the incident. Weiss, NYPD Investigating, supra.
solutions to these systemic problems that could help preserve the undercover system’s legitimacy.

II. DEVELOPMENT OF UNDERCOVER POLICING

The development of undercover policing in the United States sheds light on the problems plaguing the undercover system.

A. The Meaning of “Undercover”

Police action is either overt or covert, and either deceptive or nondeceptive. The majority of police work is overt and nondeceptive. Typically this means either citizens notify police of a crime or a uniformed officer observes a crime, and uniformed officers follow up on the crime. Alternatively, some police work is overt and deceptive. Overt and deceptive police work could consist of clearly recognizable police officers lying to extract a confession or tricking an attacker into putting down his weapon by claiming he will not be prosecuted. A third category of police activity is covert and nondeceptive. Here, the aim is to go unnoticed by the public but not to deceive the public, and it primarily includes hidden surveillance. A key quality of covert, nondeceptive activity is that it does not affect a suspect’s environment, perceptions, or behavior.

Undercover activity falls into the fourth category: covert and deceptive. An “undercover agent” in the context of police work is a “police officer who gathers evidence of criminal activity without disclosing his or her identity to the suspect.” Examples of undercover activity include an officer, pretending he is a drug addict, purchasing drugs from a dealer (“buy and bust”) or an officer living amongst a group of individuals suspected to be criminals in order to gather intelligence (“deep cover”). Rather than documenting an offense and then locating the offender, covert and deceptive police work often occurs before an offense has been committed. Although deception is used in normal police work as well, this “normal” deception extends only to the officer’s purpose, such as when an officer asks to look around a suspect’s apartment without explaining why, but deception used in undercover police work extends to both the officer’s purpose

50. Id.
51. Id.
52. Id. at 12.
53. Id.
54. Id.
55. Id.
56. BLACK’S LAW DICTIONARY 75 (9th ed. 2009) (defining “undercover agent”).
58. Id. at 162–65 (describing the three different types of undercover policing).
and his or her identity. For this reason, use of informants is generally not viewed as classic undercover activity.

Due to the clandestine nature of undercover activity and its lack of a central governing authority, officials and scholars alike are largely uninformed regarding typical undercover practices. Even with a lack of hard data, scholars agree that federal police officers are more likely than local officers to engage in undercover practices, although this may be changing due to the drastic increase in local undercover activity in recent years.

B. The Argument for Undercover Policing

Undercover techniques serve a critical function in the criminal justice system. Often, underground criminal activity can only be discovered through undercover investigation; this is especially true when law enforcement officers need to locate the bigger fish, such as the leaders in complex criminal organizations. Additionally, crimes involving narcotics—the most common target of undercover operations—finances, wildlife, or property often have no victims or witnesses who can reveal the crime to the police. Another critical use of undercover operations is preventing crimes before they occur, such as through infiltrating terrorist organizations.

Undercover techniques take on an even more important role given the Supreme Court’s growing restrictions on typical police work. Fourth Amendment limitations are forcing police departments to increasingly rely on undercover techniques to perform tasks that were previously left to uniformed officers. While undercover officers are still generally subject to Fourth Amendment restrictions, they have greater access to information through the use of deceptive techniques that fall

59. Id. at 161.
60. See MARX, supra note 49, at 13 (“Little information is routinely collected, and even less is made public.”); see also George I. Miller, Observations on Police Undercover Work, 25 CRIMINOLOGY 27, 44 (1987) (noting that the true extent to which police departments use undercover tactics is unknown).
62. See Goldman & Apuzzo, supra note 1 (providing examples of pervasiveness of undercover activity at national and local level); cf. Miller, supra note 60, at 42 (observing that municipal police departments that use undercover operations use them regularly, not only as a last resort).
66. Stephens, supra note 63, at 15.
67. Joh, supra note 57, at 161–62 (asserting that the growing complexity of Fourth Amendment jurisprudence in the post-Warren Court era forces police to use techniques not as heavily regulated, such as undercover operations).
within the ambit of the law. For example, while a criminal is unlikely to allow a police officer without a warrant into his apartment, he may welcome an undercover officer he does not know works for the police. Deception has replaced brute force as a technique of extracting otherwise unavailable information, making undercover techniques both a critical and quickly growing method of combating crime.

C. History and the Modern Credibility Problem

The United States developed covert operations later than most Western nations due to early America’s fear of centralized police forces. Undercover work only began to expand in the United States in the second half of the nineteenth century. It began with Allan Pinkerton, who honed his undercover talents while working on the Underground Railroad and later worked for agencies like the U.S. Postal Service, posing as a customer ordering contraband literature. The Federal Bureau of Investigation ushered the United States into a new age of espionage when it opened its doors in 1908, though it only started routinely using undercover techniques in the 1970s. Local police responded to this trend by increasing the volume of their own undercover work.

As the prevalence of undercover activity rose, so did public backlash. Criticism grew in the 1980s, as some members of the public disapproved of government officers participating in deceitful and illegal activities. The major catalyst for change was Operation Abscam, in which FBI agents posed as sheiks and offered bribes to Congressmen in exchange for asylum in the United States. The operation had an essentially unlimited scope in terms of geography, potential...
criminal targets, and types of criminal activity.\textsuperscript{79} Public officials lashed out, claiming that the operation was “unprecedented, possibly illegal, immoral and unnecessary,”\textsuperscript{80} and in response, the Senate created the Senate Select Committee on Undercover Operations.\textsuperscript{81} The Select Committee evaluated the state of undercover activities in Department of Justice agencies and decided whether the guidelines and laws in place sufficiently protected citizens’ rights well enough to continue utilizing undercover activities.\textsuperscript{82}

Today, nearly all municipal police departments in the largest U.S. cities conduct undercover operations of some variety.\textsuperscript{83} America’s undercover investigation system, however, suffers greatly due to a lack of public approval, an issue plaguing the system since Operation Abscam garnered public attention. The reasons for the public’s mistrust and generally low approval include the undercover system’s lack of transparency, largely unfettered police discretion, and moral ambiguity arising from police engaging in unlawful activity.\textsuperscript{84}

Numerous recent undercover intrusions on lawful activities reinforced the public’s general mistrust.\textsuperscript{85} Law enforcement agencies across the country, including federal and state actors, utilized undercover operations to infiltrate private groups that are acting within legal boundaries.\textsuperscript{86}

The NYPD’s Intelligence Division, for whom Braszczok worked, came under particular scrutiny for its lack of outside oversight and its various intrusions upon lawful activity.\textsuperscript{87} The press reported that the division monitored Muslim neighborhoods as part of its post-9/11 effort, cataloguing individuals who prayed at mosques.\textsuperscript{88} The division also faced criticism for an operation in which Braszczok

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\textsuperscript{79} Marx, supra note 49, at 9 (revealing that the operation allowed agents to assume false identities in order to see what kinds of criminal activities could be detected or developed across the entire United States).

\textsuperscript{80} Wagner, supra note 65, at 375 (citing John F. Smith et al., How To Set Up and Run A Successful Law Enforcement Sting Operation (1991)).

\textsuperscript{81} Id.

\textsuperscript{82} S. REP. NO. 97-682, at 5 (1983).

\textsuperscript{83} Hamilton & Smykla, supra note 64, at 144 (reporting that eighty-nine out of one hundred departments in the largest one hundred U.S. cities responded to the questionnaire on undercover activities, and all eighty-nine said they conducted undercover operations).

\textsuperscript{84} Joh, supra note 57, at 180–81.

\textsuperscript{85} Goldman & Apuzzo, supra note 1 (reporting also that the NYPD has come under fire for the use of its intelligence unit to monitor political groups prior to the 2004 Republican National Convention, and recent interviews and documents show that the unit attended meetings of liberal political groups).

\textsuperscript{86} Id. (stating that the FBI gathered information on anti-war groups, the Maryland state police infiltrated meetings of groups against the death penalty, and Texas officials prompted monitoring pro-Muslim lobbying efforts).

\textsuperscript{87} Id. (stating the division refuses to allow the public to view their organizational chart); see also Victoria Cavaliere, Political Groups Seek Audit of NYPD Surveillance Tactics, Reuters (May 27, 2014, 5:58 PM), http://www.reuters.com/article/2014/05/27/us-usa-police-newyork-idUSKBN0E726720140527 (reporting that political groups sought an audit of NYPD tactics due to alleged practices of “sen[ding] undercover officers to political group meetings, s[pying] on members, list[ing] groups that used civil disobedience as ‘terrorist organizations’ and main[taining] secret files on activists”).

\textsuperscript{88} Goldman & Apuzzo, supra note 1.
worked: infiltrating the Occupy movement. The NYPD’s Intelligence Division monitored the movement, even though the U.S. Department of Homeland Security urged agencies not to produce intelligence reports based solely on constitutionally protected activities. The public has become increasingly aware of the pervasiveness of police undercover tactics, and thus its importance is growing.

D. Critical Link Between Undercover Policing and Police Legitimacy

Any law enforcement agency needs substantial public support to perform its duties effectively. The NYPD, due to recent public relations problems, should do everything in its power to maintain a positive public image. Public opinion of police legitimacy is most strongly influenced by the public’s perception of the fairness of police procedures. Additionally, views about police obligation and responsibility affect public support of the police. This evidence suggests that the public is more concerned with how police exercise their authority than with their ability to control crime.

Perception of police legitimacy, not evaluation of police performance, has been found to influence compliance with the law. According to defiance theory, if the police do not respect the rights and dignity of citizens when executing their duties, then citizens will feel angry. This defiance will manifest itself in the form of future violations of the law as a way of protesting what is viewed as unfair or improper action on the part of the police officer.
Perhaps the most important effect of perception of legitimacy, however, is its heavy impact on the public’s willingness to empower the police.\textsuperscript{99} Therefore, positive public opinion of police legitimacy helps control crime by increasing compliance with, cooperation with, and consent to a level of police power that is necessary to control crime. Due to these relationships, undercover operations, and crime control in general, will be more effective if undercover officers and operations respect the law and the public. This is because the public will be more willing to empower the police by complying with and acquiescing to their actions.

Although authorized criminality is commonly used in undercover work,\textsuperscript{100} a line exists beyond which the public will deem police deception or unlawful activity intolerable. The concept of government officers deceiving the public or violating the law seems contrary to democratic ideals, but some amount of deceit and illegal activity is often necessary to succeed undercover.\textsuperscript{101}

Policy justifications explain why undercover police are sometimes permitted to violate the law. Most commonly, undercover officers engage in criminality either to induce others to engage in criminal conduct or to help the officer maintain a false identity.\textsuperscript{102} The FBI undercover guidelines specifically authorize undercover agents to engage in criminal conduct to obtain evidence necessary for prosecution or to maintain cover, and the guidelines further approve criminal conduct to prevent death or serious bodily injury.\textsuperscript{103} The incredible danger faced by undercover officers justifies their ability to use almost any means necessary to protect themselves, even if those means are illegal under normal circumstances.\textsuperscript{104}

However, undercover officers have largely unchecked authority to violate laws in order to accomplish an operation’s objectives.\textsuperscript{105} Some undercover officers take advantage of this freedom and engage in criminal activities such as counterfeiting money, purchasing illegal firearms or narcotics, using narcotics, and money

\textsuperscript{99} Sunshine & Tyler, supra note 93, at 542. The survey investigating legitimacy and empowerment consisted of questions asking for a degree of agreement or disagreement on statements such as “The police should have the power to do whatever they think is needed to fight crime,” and “People’s basic rights are well protected by the police.” \textit{Id.} at 542–43.

\textsuperscript{100} Joh, supra note 57, at 158.

\textsuperscript{101} See \textit{id.} at 187 (citing S. Rep. No. 97-682, at 11 (1983)).

\textsuperscript{102} See \textit{id.} at 165 (listing inducing others or maintaining cover as the two most common purposes for allowing undercover officers to engage in criminality).

\textsuperscript{103} S. Rep. No. 97-682, at 54 (1982); \textit{see also} Dix, supra note 91, at 286 (proposing a model rule that establishes when an undercover officer may commit an offense other than the “controlled offenses”).


\textsuperscript{105} Joh, supra note 57, at 159 (describing the limited means of curbing morally intolerable undercover techniques).
laundering. A Senate Report specifically endorsed the practice of officers engaging in minor property crime, such as window smashing or other comparable violent activity, in order to maintain cover, so long as the operation was sufficiently significant. Local departments generally do not have any formal guidelines to check undercover officers’ use of illegal activities.

Use of undercover techniques represents a “sacred trust” between law enforcement and citizens; if the trust is violated, the citizens should stop supporting the techniques. At least some undercover investigations lower community support for law enforcement agencies. Current police practices toe the line of tolerability, and in doing so they risk undermining the legitimacy that is critical to the success of the law enforcement system. Undercover officers who are psychologically unfit to withstand the pressures of undercover work threaten to cross this line, so the system must be modified. Implementing a system of candidate selection and training akin to the Survival, Evasion, Resistance, and Escape (“SERE”) training program used for Special Forces in the U.S. military, either within public police departments or at the private level, would greatly reduce the number of unfit candidates working in undercover situations.

III. Psychological Impacts of Undercover Work and the Systemic Problems Responsible for Them

Braszczok’s involvement in the attack on Lien demonstrates one of the public’s primary concerns with the undercover system: police overreach and harm of innocents. These actions, which undermine the public’s faith in the undercover system, are often committed by undercover officers who are unfit to handle the psychological effects of undercover work. The stress and emotional strain placed on undercover officers can produce a myriad of psychological side

106. United States v. Gonzales, 539 F.2d 1238, 1239 (9th Cir. 1976) (counterfeit money); Baker & Goldstein, supra note 104 (purchase of firearms and use of crack); David Rosenzweig, Laundering Scheme Detailed by U.S., L.A. Times (June 2, 1998), http://articles.latimes.com/1998/jun/02/local/me-55671 (money laundering); see Joh, supra note 57, at 156, n.6 (listing crimes committed by undercover officers in the line of duty).

107. S. REP. NO. 97-682, at 391 (approving of smashing windows to maintain cover during investigation of multi-million dollar extortion ring).

108. See Hamilton & Smykla, supra note 64, at 145.


110. Dix, supra note 91, at 211.

111. See infra Part III.

112. See infra Part IV.A.

113. See Stephens, supra note 63, 15–17 (arguing that the primary risks of the undercover process are government overreach and harm to innocents).

114. Sunshine & Tyler, supra note 93, at 534–35 (finding that overbroad or unfair application of the law in a way that impinges on citizens’ rights undermines police legitimacy).
effects. These psychological side effects harm the undercover officer and undermine his or her effectiveness; if left unchecked, the strain may cause the officer to act rashly and out of line, threatening citizens’ rights.

To counteract the mental strain placed on officers, three steps should be taken: police departments should (a) use undercover officer selection methods that disqualify those who are ill-suited for the job, (b) adequately train and monitor undercover officers, and (c) adopt formal rules governing undercover operations to ensure the safety of officers’ physical and mental health. Producing accountable, mentally fit undercover officers will help maintain a positive public opinion of the undercover system. This will bolster both the undercover system and general law enforcement by preventing police overreach and minimizing harm to innocent victims.

A. Mental Strain on Undercover Officers

The typical path to an undercover career helps to explain the high incidence of psychological strain. The groundwork for the identity struggle experienced by many undercover officers is laid at the recruitment stage. Commonly, a potential recruit in his or her twenties walks into the police station and must decide almost immediately whether he or she has any interest in working undercover, a decision that is often accompanied by tempting promises of respect and opportunities for promotion upon completion of the assignment. If the recruit responds positively, the newly minted officer will be handed an assignment and given minimal training; the recruit often does not go through the police academy until after completion of the undercover work. Once undercover, the recruit must adopt an entirely new persona and undertake difficult and extraordinarily dangerous police work while largely isolated from other officers, a task made even more stressful by the officer’s rudimentary knowledge of police work.


116. See Joh, supra note 57, at 167–68 (detailing the hazards and consequences of rogue cops who “go native”).

117. Stephens, supra note 63, at 15 (asserting that credibility of the undercover system is tied to minimizing the appearance of government overreach and harm to innocents).

118. Miller, supra note 60, at 31, 33 (reporting that officers in empirical study accepted undercover assignments primarily because they assured that they would be either selected to the department or “promised a later benefit” such as assignment preference or promotion).

119. See id. at 33–34 (finding that undercover officers often do not complete police academy training before undercover assignment).

120. Undercover officers are ten times more likely than uniformed police officers to be shot or shoot someone. Laurence Miller, Undercover Policing: A Psychological and Operational Guide, 21 J. POLICE & CRIM. PSYCHOLOG., Fall 2006, at 1, 3 [hereinafter Miller, Undercover Policing] (citation omitted).

121. See Joh, supra note 57, at 188 (describing the challenging situation undercover officers must endure, including the danger and isolation).
1. Loss of Self

Given this scenario, the emotional and psychological toll that an undercover officer faces is entirely foreseeable, and it often causes a psychological phenomenon known as a “loss of self.” An undercover officer must suppress his or her true “self” and adopt an entirely new persona in order to best deceive the target. Frequently, the officer’s new persona must be deceitful and lawless, a sharp contrast with the officer’s duty to follow and uphold the law. Undercover officers are at serious risk of developing a “split personality” or experiencing the “self as unreal,” meaning that officers will abandon their old personality and adopt the personality associated with their undercover role. These traits are characteristic of dissociative personality disorder, in which multiple identities or personalities recurrently take over a person’s behavior.

One FBI agent whose undercover work lasted for two-and-a-half years provides an example of dissociative personality disorder. He was arrested for shoplifting and told authorities that ever since he went undercover, he had begun adopting his undercover persona in situations completely separate from his undercover work. The agent could not explain to authorities how his undercover persona kept reappearing. In another example, an IRS agent was caught illegally revealing confidential information; during questioning, he behaved like himself until the questions turned to the unlawful disclosures. At that point, the agent “straighten[ed] up, shift[ed] to a distinct foreign accent, and adopt[ed] a brassy and haughty demeanor”; all of these traits were in line with the undercover persona he had adopted in Germany years earlier.

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122. See id. at 188–89; see also Miller, supra note 60, at 38 (describing how undercover police officers get more comfortable with their fictitious identities).


124. Id. at 243–244.

125. Id. at 243; see also Girodo, Symptomatic Reactions, supra note 115, at 626 (describing how undercover agents feel a “strange sense of experiencing the self as ‘unreal’”).

126. See Michel Girodo et al., Dissociative-Type Identity Disturbances in Undercover Agents: Socio-Cognitive Factors Behind False-Identity Appearances and Reenactments, 30 J. SOC. BEHAV. & PERSONALITY 631, 632 (2002) [hereinafter Girodo et al., Dissociative-Type] (describing interviews with officers in which the interviewer observed this phenomenon).

127. Id. at 633.

128. Id. at 632.

129. Id.

130. Id.

131. Id. at 632–33.

132. Id. at 633.
2. Effects of Loss of Self

Undercover work affects an officer’s worldviews in a manner comparable to trauma. The officer may suffer mental health consequences ranging from depression to post-traumatic stress disorder or suicide. The psychological effects of undercover work may also lead to any combination of corruption, disciplinary problems, alcohol and drug abuse, interpersonal problems, paranoia, or extreme narcissism. Symptoms observed in studies of undercover officers actively involved in an investigation align with those of psychiatric outpatients, and frequently, the officers most resistant to therapy are the ones who need it most.

In the worst cases, mental strain may cause the officer to become indoctrinated into the group under investigation, particularly in “deep cover” and “subversive” operations. An officer in “deep cover” is completely immersed in a setting and thus must be constantly in character, a requirement that mentally wears down the officer over time, as many assignments last more than one year. Braszczok was reportedly in deep cover during the Occupy movement, an experience that may have caused lasting psychological impact, such as by decreasing his ability to re-adjust to society after emerging from an undercover assignment.

Psychological effects are most often caused by assignments involving “subversive” environments, which include operations targeting suspected terrorist groups or other similar threats to society and require twenty-four hours per day commitments that are made even more difficult by their indefinite timeframe. An officer


135. Joh, supra note 57, at 188–89 (citations omitted); see also Girodo, Undercover Agent, supra note 123, at 243 (corruption and disciplinary problems); Macleod, supra note 134, at 242 (narcissism). Braszczok appeared to exhibit signs of extreme narcissism. See Berry, supra note 26 (describing Braszczok’s behavior and egotistical photos posted online).

136. Girodo et al., Dissociative-Type, supra note 126, at 632.


139. Miller, supra note 60, at 38, 40–41. The more time spent in an operation, the more the operation begins to dominate the officer’s thoughts. Id. at 38 (describing officer who, while requesting time off, complained to supervisor about “dream[ing] of buying drugs”).

140. Prokupecz, supra note 23; Weiss, Biker Cop, supra note 27. See Miller, supra note 60, at 40 (“But, for the officer in a deep-cover assignment, the completion of the often length masquerade may be intensely emotional.”).

141. Miller, supra note 60, at 39 (describing the challenges of subversive environments, including the inability to see a “concrete product”).
may become emotionally attached to someone he or she is investigating\textsuperscript{142} or may begin identifying with the subversive viewpoints of a particular group.\textsuperscript{143} One officer’s simple analogy demonstrates the temptation:

I started with drugs and [the relationships were] clearly evident—white hats and black hats. Then I switched to subversive activities and it was more like white hats and grey hats. And my hat got grey. But they were my only friends. I didn’t have any other friends. [You] develop a closeness that is psychologically difficult to close off.\textsuperscript{144}

The officer faces an internal struggle between his old morals and duty to uphold the law, and his new bonds or beliefs.\textsuperscript{145} Officers who succumb to these temptations frequently violate the law in the future.\textsuperscript{146} An added layer of complexity stems from the fact that officers are often permitted to engage in certain crimes while undercover, allowing them even further separation from their true “selves.”\textsuperscript{147}

Even if the officer completes the operation without displaying psychological effects, emotional problems from a loss of self may surface when the officer must leave his deep-cover assignment.\textsuperscript{148} Transition problems are not uncommon, and these problems may undermine personal relationships and lead to alcohol and drug abuse.\textsuperscript{149}

These psychological problems, though undoubtedly caused by the undercover work itself, are worsened by current methods of selection, training, and guidance of undercover officers. The existing practices are a recipe for psychological problems for impressionable young officers who may not be fit for undercover work.

\section*{B. Methods of Counteracting Mental Strain}

\subsection*{1. Selection}

The selection process for undercover officers is an important barrier for keeping out psychologically unfit candidates, and the use of psychological evaluation

\textsuperscript{142} Gary T. Marx, \textit{Under-the-Covers Undercover Investigations: Some Reflections on the State’s Use of Sex and Deception in Law Enforcement}, 11 CRIM. JUST. ETHICS 13, 23 n.34 (1992) (explaining that agents must anticipate sexual advances and detailing the consequences of emotional attachment with targets).
\textsuperscript{143} Miller, supra note 60, at 40.
\textsuperscript{144} Id. (alterations in original).
\textsuperscript{145} Joh, supra note 57, at 189. Some sources familiar with Braszczok’s case have speculated that it may represent the potential consequences of an officer spending too much time in a role and “forg[ett]ing what side of the law he is on.” Weiss, \textit{Biker Cop}, supra note 25.
\textsuperscript{146} Miller, supra note 60, at 40.
\textsuperscript{147} Joh, supra note 57, at 190 (describing how authorized crime increases the psychological difficulty of undercover work); See discussion supra Part III.A.1.
\textsuperscript{148} Miller, supra note 60, at 40.
\textsuperscript{149} Macleod, supra note 134, at 242.
during selection increases the effectiveness of the selection process.\(^{150}\) The undercover officer selection process can be a powerful predictor of psychological fitness.\(^{151}\) The minimal standards guiding the selection process in many law enforcement agencies fails to produce candidates who will be able to withstand the mental strain of undercover work.\(^{152}\) These candidates are more susceptible to the negative psychological consequences of undercover work, making them more likely to experience a loss of self and abandon their sense of right and wrong.

Undercover officers are generally selected from a pool of volunteers.\(^{153}\) The makeup of the pool is not only limited by self-selection, it is also affected by artificially positive information disseminated by police departments to potential undercover officers regarding undercover work.\(^{154}\) In addition to problems with the makeup of the candidate pool, many of the traditional selection criteria—such as psychological and physical characteristics, law enforcement experience, and personality traits—do not best identify officers who can withstand the mental pressures of undercover work.

\(a. \) Physical Traits

Selection is guided principally by officer appearance because the race or gender of a candidate is thought to play an enormous role in how suitable he or she is for an undercover assignment.\(^{155}\) Other superficial traits such as language spoken or physical appearance also factor into selection.\(^{156}\)

Selection processes should consider physical traits to a certain extent, as officers who have a certain appearance may appear more convincing in certain roles. But allowing physical characteristics to outweigh an officer’s subpar psychological traits is problematic. The selection process should first provide a pool of candidates with suitable psychological traits; the law enforcement agency should then select based on the physical characteristics necessary for the operation at hand.

\(150.\) Band & Sheehan, supra note 109, at 5 (declaring that success of an operation depends on effective psychological assessment during selection); Macleod, supra note 134, at 243 (“Poor selections increase the risk [of psychological harm].”).

\(151.\) Macleod, supra note 134, at 242 (describing study showing that psychological evaluations can predict which officers were risks for psychological distress from undercover work).

\(152.\) Id. at 129, at 242–43 (describing importance of selection process in identifying psychologically fit undercover candidates); Miller, supra note 60, at 43 (stating that few standards govern selection of “agents”).

\(153.\) Girodo, Symptomatic Reactions, supra note 115, at 629.

\(154.\) Miller, supra note 60, at 33 (reporting that experience of some undercover officers showed that hiring officers emphasized the positive aspects of undercover work in an effort to recruit).

\(155.\) See Baker & Goldstein, supra note 104 (reporting that most undercover candidates are black or Hispanic because “minority drug dealers are more likely to suspect white customers of being undercover officers”); see also Band & Sheehan, supra note 109, at 4 (“Too often, supervisors assume that the officer whose ethnic, racial, or cultural background matches the criminal’s represents the optimal officer for a particular undercover assignment. Unfortunately, this mistake frequently leads to personal and operational tragedy.”); Girodo, Undercover Agent, supra note 123, at 243 (finding that personal suitability to the operation’s objectives included considerations of ethnic background).

\(156.\) Girodo, Undercover Agent, supra note 123, at 243.
b. Psychological Characteristics

An undercover officer’s psychological characteristics undoubtedly impact his or her effectiveness. For example, officers who would feel uncomfortable acting would likely be unsuited for undercover work, while officers who thrive off such scenarios may feel more comfortable going undercover.

However, many personality traits traditionally viewed as desirable for an undercover officer have since been shown to be uncorrelated with undercover success and even linked to an increased risk of psychological problems. Traits long considered fundamental to the ability to mislead a target include “brashness, outgoingness, and acting ability.”157 However, extroversion and strong acting ability in undercover officers have been linked to psychological and disciplinary problems.158 The typical personality profile of an undercover officer involves narcissism and brashness, and prolonged undercover assignments tend to exaggerate these traits.159 This exaggeration produces extremely narcissistic, vigilante undercover officers for whom “[t]he thrill of deception and manipulation... then become[s] an end in itself, outweighing commitment to the law enforcement objectives.”160 Braszczok appears to fit squarely into this role, as demonstrated by his desire to broadcast his womanizing and fast cars across the Internet and by his vigilante behavior caught on video.161

Additionally, an undercover officer’s ability to be flexible and “dissemble” himself or herself only to portray the traits desirable for a particular mission was historically viewed as a positive characteristic.162 Contrary to this popular belief, however, traits that help undercover officers maintain their non-undercover identities, such as self-discipline or self-awareness, should carry greater value than traits that allow the officer to “dissemble” the normal self.163 The ability to “dissemble” runs contrary to the militaristic mindset demanded by typical police training, which may create internal conflict for an undercover officer trained in the traditional police mold but now told to be more flexible.164

Other non-traditional psychological traits are also currently ignored. Most undercover officers are not willing to accept psychological assistance for any mental strain they endured during an undercover assignment.165 However, the selection process does not account for a candidate’s willingness to accept psycho-

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157. Id.
158. Id.
159. Miller, Undercover Policing, supra note 120, at 12.
160. Id.
161. See Berry, supra note 27 (describing Braszczok’s lifestyle and Internet presence).
162. Miller, supra note 60, at 43.
163. Id. at 40.
164. Id. at 43.
logical assistance in the future, impairing the ability to undo the psychological harm caused by undercover work.166

c. Age and Experience

Young officers who hope to advance in the department often see undercover work as an opportunity, although that belief is often incorrect.167 Department officials typically prefer to recruit younger, inexperienced officers for undercover units, with some departments deploying undercover officers as young as their early twenties.168 Young officers do not have the “quasi-militaristic” demeanor often seen in more seasoned officers, a trait that often reveals an undercover officer’s true identity.169

Younger police officers, however, are not mentally mature enough to know the dangers inherent in undercover work170 and are more likely to develop identity issues.171 The freedom to bend the law while working undercover poses a greater challenge to an untrained officer’s moral compass.172 For this reason, as well as a new officer’s lack of established support relationships within the department, officers with less undercover experience have a greater likelihood of experiencing psychological damage from a particular undercover operation.173 Some believe that older age or other life experience correlates with lower incidence of psychological issues caused by undercover operations.174 One study has even demonstrated that a “secure police identity” is associated with more psychologically stable undercover officers.175 Because psychologically stable officers are key to

166. Id. (listing the qualities considered preferable in prospective undercover officers, which did not include willingness to accept future psychological assistance).
167. Miller, supra note 60, at 32 (stating that prospective officers often perceived undercover work as a prerequisite to employment as a normal police officer).
168. See, e.g., Miller, supra note 60, at 31, 43 (finding that interviews with former undercover officers show undercover operations generally carried out by new, inexperienced and often untrained officers); William K. Rashbaum, Detective Was “Walking Camera’ Among City Muslims, He Testifies, N.Y. TIMES (May 19, 2006), http://www.nytimes.com/2006/05/19/nyregion/19herald.html (describing officer who was “plucked from the academy” at age twenty-three). But see Macleod, supra note 134, at 240 (explaining that officers of a mature age are preferred for undercover work).
169. See Joh, supra note 57, at 167 (describing traits that suspicious drug dealers use to identify an undercover officer).
170. Miller, supra note 66, at 42–43 (describing how new officers are mentally immature and unaware of dangers and thus feel overconfident, leading them to commit careless errors and take unnecessary risks); see also id. at 38 (finding that out of eighteen former undercover officers interviewed, all but one “express[ed] astonishment at some aspect of what they had done in some situation”).
171. Girodo et al., Dissociative-Type, supra note 126, at 641.
172. Miller, supra note 60, at 43.
175. Id. at 240, 245 (finding that narcissism dissipates more effectively post-operation if the officer has a secure police identity). Although Braszczok spent time as a uniformed officer prior to going undercover, he may not have exhibited such intense narcissism had the department ensured that he had a secure police identity before allowing him to go undercover.
the success of undercover operations, mature officers with a “cop” persona may actually be the best candidates.

2. Training

In addition to improving selection, implementing formal training prior to undercover deployment can prevent negative psychological impacts to undercover officers. However, current undercover training processes do not help officers establish a firm police value system or learn how to respond to the psychological stresses of undercover work prior to beginning assignments. Historically, training of undercover officers has been minimal, with many departments subscribing to the Hollywood ideal of the undercover agent as a “lone hero, winging it by the seat of his pants.” In a survey of undercover officers in one department, over half reported wanting more training than they actually received. Often, the only training provided is specific to a particular operation, with very little emphasis placed on general undercover training. Sometimes, even assignment-specific details are not provided. In the NYPD, where Braszczok worked, undercover officers are typically given about one month of training, enough time to take “crash courses” on street drugs and lessons on how to imitate addicts. Braszczok may have had more thorough training than undercover officers in other departments, but his behavior and personality traits certainly suggest that he ascribed to the “lone hero” characterization.

Supervisors primarily justify the lack of traditional police training offered to undercover officers by citing concern that a target will detect undercover officers who possess a cop persona. However, given how much undercover work may challenge an undercover officer’s morals, the need for certain types of training outweighs the risk of detection. First, an undercover officer must establish a secure police identity, in an entrenched police value system, which requires time and experience. Second, undercover officers should be taught how to resist the

176. Band & Sheehan, supra note 109, at 5.
177. Miller, supra note 60, at 34–35 (reporting that of officers interviewed, the most training was one day); Miller, Undercover Policing, supra note 120, at 7 (observing that the amount of training given to undercover officers is surprisingly low given the emphasis on training in most other areas of law enforcement, such as the SWAT or hostage-negotiation units). But see Baker & Goldstein, supra note 104 (describing how officers received one month of training).
178. Miller, Undercover Policing, supra note 120, at 7.
179. Id.
180. See Miller, supra note 60, at 35 (describing interviews with officers regarding their undercover training).
181. Miller, Undercover Policing, supra note 120, at 7 (describing a survey of undercover officers within one department and reporting that nearly a quarter received no information specific to their assignment).
182. Baker & Goldstein, supra note 104.
183. See Miller, supra note 60, at 34 (“Maybe the training was inadequate, but if you want somebody to operate as an effective undercover person, do you really want them to have police training? I don’t think so.” (quoting undercover supervisor)).
184. See Macleod, supra note 134, at 240 (attesting to the importance of a secure police identity).
stresses of undercover work, as well as how to identify when they may be psychologically compromised.  

In addition to harming the officer, insufficient training may compromise the undercover mission, primarily through errors committed by the undercover officer during the operation.  

A lack of training makes undercover officers more susceptible to the psychological stress of the operation, placing them in greater danger of abandoning their commitment to follow and uphold the law and leading to lapses of judgment like those of Braszczok. Moreover, psychological stress may make the officer more careless. Careless mistakes by law enforcement may establish a defense for the accused that could lead to suppression of any evidence gained through the undercover operation.  

3. Guidelines  

Unlike most police activity, undercover operations are fairly unrestrained by constitutional or legislative regulations. The wide range of undercover operations and the uncertainty present during all stages of an operation have produced an undercover environment largely governed by internal guidelines rather than broadly applicable, federally promulgated rules. While some police departments believe formal guidelines reduce the effectiveness of undercover operations, many departments and federal agencies have enacted guidelines in response to public criticism of undercover activities.  

Although internal guidelines are not legally binding in courts, they are the only written tools available to control undercover operations.  

In a survey of police departments in the hundred largest cities in the United States, twenty-five percent of the respondents who had conducted undercover operations reported that they did not have guidelines for conducting the undercover operations. Departments with guidelines were then asked their reasons for promulgating them; roughly half cited supervisory and administrative concerns, and over one quarter cited legal issues. While a primary purpose of guidelines should be on ensuring the safety and effectiveness of the most critical component of any undercover operation—the officer—less than one quarter of departments

185. Miller, Undercover Policing, supra note 120, at 7–8.
186. Id. at 7.
187. Miller, supra note 60, at 43.
188. Miller, Undercover Policing, supra note 120, at 7.
189. Wagner, supra note 65, at 373.
190. Id.
191. Hamilton & Smykla, supra note 64, at 145–46.
192. Wagner, supra note 65, at 373 (citing the FBI, Fish and Wildlife Service, IRS, and Drug Enforcement Agency as agencies with guidelines).
193. Id. (stating that internal guidelines are advisory only).
194. Hamilton & Smykla, supra note 64, at 145. Interestingly, the departments without guidelines are located disproportionately in the Northeast, which may represent tradition triumphing over logic. Id. at 146.
195. Id. at 145.
created undercover guidelines for safety reasons, and only one department reported as its primary purpose reducing mental strain on undercover officers.\textsuperscript{196} Guidelines can be placed into two general categories: “procedural” and “authorizational.”\textsuperscript{197} Procedural guidelines generally instruct on “how to conduct undercover investigations” and regulate items such as recruitment of officers, equipment, and budget.\textsuperscript{198} Authorizational guidelines address “when and when not to conduct undercover investigations” and focus instead on which investigations are authorized and which types of activities are restricted.\textsuperscript{199} While some departments have guidelines on both “how to” and “when to” conduct undercover investigations, most departments emphasize one or the other.\textsuperscript{200} However, both types of guidelines are critical to the success of undercover operations. Guidelines that control how investigations are conducted ensure the safety of undercover officers. For example, rules governing how long an officer may stay undercover in a particular role help prevent loss of self, while failing to include such rules may make officers feel too comfortable, causing them to slip up or take unnecessary risks.\textsuperscript{201} Guidelines that control when investigations should be conducted are equally important to protecting undercover officers, as certain environments may be too dangerous. Police departments need both types of guidelines, as each regulates important components of the selection, training, and operation of undercover officers. Currently, the use of guidelines varies widely,\textsuperscript{202} and their use must be more closely enforced in order to maintain an effective and reliable undercover system.

IV. \textbf{HOW TO IDENTIFY AND DEVELOP PSYCHOLOGICALLY FIT UNDERCOVER CANDIDATES}

The primary solution to the shortage of psychologically fit candidates for undercover work is to implement a SERE program for undercover officers, though privatizing undercover work presents an alternative solution. Decreasing reliance on undercover officers by using more informants is a limited tool that cannot replace undercover operations.

Identifying and developing more psychologically fit candidates is the only

\begin{itemize}
\item \textsuperscript{196} See id. (stating that the department’s “major reason” for introducing guidelines was reducing the undercover officer’s “confusion and stress”).
\item \textsuperscript{197} Id. at 147.
\item \textsuperscript{198} Id.
\item \textsuperscript{199} Id. at 148.
\item \textsuperscript{200} Id. at 148–49.
\item \textsuperscript{201} See Miller, supra note 60, at 38 (concluding that spending too much time in an undercover operation may lead to unnecessary risks and errors). Most departments have no such guidelines. Id. at 43. For example, undercover officers in the NYPD are only supposed to remain an undercover officer for a maximum of thirty-six months, but most officers get stuck in the job longer because there are not enough applicants. Baker & Goldstein, supra note 104. Investigators have estimated that only “a dozen or so” new undercover detectives are trained each year. Id.
\item \textsuperscript{202} Joh, supra note 57, at 178.
\end{itemize}
viable solution to the legitimacy crisis faced by undercover programs. Despite the importance of personality traits and other psychological characteristics, many police departments do not utilize psychological evaluations during selection, after selection, or after the operation has concluded. At the time Braszczok was first selected for undercover work, the NYPD had not yet instituted specialized psychological screening for undercover candidates. If they had begun these procedures sooner, psychologically unfit candidates who act out like Braszczok may have been excluded. Rather than basing selection upon psychologist recommendations, most police departments typically allow an official in the “Detective Department” to select from candidates based upon a recommendation from an officer who has reached the rank of detective or higher.

A study of one New Zealand police department demonstrates the benefits of utilizing a thorough selection process that relies heavily on a psychological panel to analyze candidates. During the selection process, most candidates selected were “clear-cut” selections, while ten officers required greater discussion amongst the panel prior to eventual selection. A study of undercover officers selected through this process showed that sixteen percent of the “clear-cut” selections exhibited major psychological issues once their respective undercover operations ended, while sixty percent of the officers requiring greater panel discussion prior to selection exhibited major psychological issues. The accuracy with which the panel identified officers psychologically fit for undercover selection demonstrates the important role of thorough psychological evaluations.

A. Survival, Evasion, Resistance, and Escape (“SERE”) Training

Police departments should utilize a selection and training process comparable to the SERE program, one of the most demanding psychological evaluations in existence. SERE began as an Air Force program used to teach Korean War soldiers how to handle extreme abuse if captured, and it was designed as a response to President Eisenhower’s executive order prescribing a code of conduct for all soldiers subject to capture. The most well-known current iteration of the SERE program is conducted by U.S. Army Special Forces, more commonly known as

203. Miller, supra note 60, at 39 (reporting results of a survey of sixteen undercover officers).
204. See Sean Gardiner, New Undercover Rules: Officers Undergo More Intensive Training in Wake of 2006 Sean Bell Shooting, WALL ST. J. (Dec. 12, 2011), http://online.wsj.com/news/articles/SB1000142405297020350130457708884086052506 (reporting that the NYPD was planning on instituting specialized psychological procedures but had not yet done so when Braszczok was selected for undercover work).
205. E-mail from Larry Jetmore, Coordinator, Criminal Justice Program, Middlesex Cmty. Coll., & former Captain, Hartford Police Dep’t, to author (Nov. 30, 2013, 7:48 PM) (on file with author).
206. See Macleod, supra note 134, at 243–44.
207. Id. at 241.
208. Id. at 242.
Green Berets. The program involves days of physical and psychological strain, including harsh interrogations, starvation, interrupted sleep patterns, and extreme temperatures.

Because the psychological stresses experienced by undercover officers are closely related to those experienced by combat soldiers, undercover candidates should be evaluated similarly to soldiers in the successful SERE program. Military personnel and undercover officers both sometimes experience peritraumatic dissociation, which may lead to post-traumatic stress disorder as a result of exposure to “high-intensity stress.” Dissociation or lack of self-regulation caused by exposure to high-intensity stress can be prevented by prior controlled exposure to such stress during U.S. Army survival training, which often takes the form of SERE training.

One study compared reported levels of dissociation between Special Forces and general infantry troops following completion of survival training. The results showed that Special Forces soldiers dissociated at a much lower rate than general infantry troops. There are a few possible explanations for the lower rate. One likely explanation stems from the SERE program’s ability to improve an individual’s response to stress. Prior exposure to high-intensity stress impacts how an individual responds to future stress, so individuals who first experience high-intensity stress in a controlled environment will react better to it in the future. Therefore, survival training would produce undercover officers who can better handle high-intensity stress during undercover assignments and will thus be less likely to dissociate. The SERE program could be employed within police departments or outsourced to private police companies.

1. Implementation in Public Police Departments

Cost is the primary roadblock preventing widespread implementation of SERE-type training programs for undercover officers within public police departments, but it is not an absolute barrier. The initial, one-time startup cost for developing a SERE curriculum is estimated to be roughly $300,000. While this number may appear affordable for a police department that serves a population of over

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211. Id. at 64.
212. COGHAN, supra note 133, at 50.
214. Morgan et al., supra note 213, at 1245 (dissociation); Mayer, supra note 210, at 64.
215. Morgan et al., supra note 213, at 1245.
216. Id.
217. Id.; see Girodo et al., Dissociative-Type, supra note 126, at 641 (stating that prior dissociation is a risk factor for future dissociation).
1,000,000 residents (average annual operating budget of $572,419,000), the startup cost would exceed the entire annual budget for departments that serve a population of under 2,500 residents (average annual operating budget of $208,000).219

However, even if all departments cannot establish their own programs, SERE programs may still provide viable methods of screening and training undercover officers for local police departments. Bringing in a SERE instructor rather than sending potential recruits to a distant location can be more cost-effective.220 For example, the Navy’s mobile training units221 demonstrate that a qualified instructor can effectively teach SERE techniques in a variety of locations. Additionally, most police departments do not currently operate their own traditional police training academies;222 much police training is already external to police departments. Like traditional police training, SERE training could also be successfully externalized. Independent SERE programs may be particularly valuable for improving undercover training because evaluators independent of the police department could provide more honest evaluations of a candidate’s psychological fitness. Therefore, police departments do not need to establish their own department-specific SERE programs and could instead utilize independently operated SERE programs.

SERE-type training outside of a military context is not currently prevalent. While many private companies offer general survival training for civilians, few companies advertise SERE-type training for civilians. The most psychologically demanding portion of SERE training is the resistance portion, during which the trainees are captured and subjected to a mock prison camp.223 Thus, the majority of programs claiming to offer SERE-type training do not provide the aspects needed for undercover selection. The lack of complete programs available on the private market may be because SERE psychological evaluators must have already completed the SERE program themselves,224 a limitation that greatly restricts the number of potential evaluators. Given the growing use of undercover operations and the lack of existing programs to help identify proper candidates, retired army

220. Mark W. Hayes, A Joint Level-C Survival, Escape, Resistance and Evasion (SERE) Program for the Armed Forces 8–9 (2003) (reporting that the Navy’s use of mobile training units can be more cost-effective than sending large amounts of personnel to a set training location).
221. Id.
222. See Hickman & Reaves, supra note 219, at 9 (reporting that only three percent of police departments operate a training academy).
224. See id.
Special Forces could repurpose their skills and market SERE-type programs for the selection of undercover officers.

2. SERE’s Negative Reputation is Undeserved

Criticisms of the SERE program may arise due to fallout from the Guantanamo Bay scandal, as officials notoriously based many of the interrogation techniques on SERE training.225 However, the negative reputation that SERE techniques earned is undeserved, as SERE was never intended for use as an offensive interrogation technique; as its name suggests, one of SERE’s primary goals is resistance.226 Indeed, experts clarify that “only a fool would think that the training could somehow be reverse-engineered into effective interrogation techniques.”227

The SERE program’s negative reputation could deter some officers from entering undercover programs, a problem that could take on a larger importance in departments like the NYPD, where volunteers are scarcer.228 However, distancing SERE from Guantanamo Bay should heal most misgivings. Additionally, even if implementing the program did decrease the number of volunteers for undercover programs, given the harms arising from inadequate undercover officers, police departments may be better served by opting for fewer, yet more effective, undercover officers over a greater volume of ill-suited officers. As evidenced by the actions of Braszczok, ill-suited undercover officers not only fail to prevent harm to the public, they may even contribute to it.

3. Privatization of Undercover Officers

One alternative to implementing SERE training techniques is to privatize undercover officers. Law enforcement has become increasingly privatized in recent decades, and privatizing undercover officer programs could provide a more efficient and effective alternative to the current system, as private programs could centralize training of large quantities of officers, allowing a more cost-efficient method of utilizing SERE training.229 This alternative could prove especially helpful to smaller police departments that lack the resources and money to appropriately train undercover officers, and it could assist larger departments that

226. As noted, the acronym “SERE” stands for Survival, Evasion, Resistance, and Escape.
227. Benjamin, supra note 225.
228. Baker & Goldstein, supra note 104 (reporting on shortage of volunteers for undercover assignments).
simply need additional help in combating the high volume of crime they face.\textsuperscript{230} Although utilizing private, SERE-trained officers could solve some of the monetary barriers to implementation at the public level and may increase overall police legitimacy, several issues with private undercover officers may arise. First, private undercover officers would not have the same powers available to public officers. Second, private undercover officers could potentially face the same shortcomings in training and selection as public undercover officers.

Private police officers may lack some constitutional constraints and could be denied certain abilities necessary to appropriately combat crime, but the difference in abilities does not harm police legitimacy. First, since private officers are not agents of the state, they have been deemed not subject to the search and seizure laws that normally constrain public police officers.\textsuperscript{231} However, debate is ongoing as to whether constitutional limits should apply, since they often act in roles comparable to public officers.\textsuperscript{232} This can lead to greater infringement upon individual liberties, particularly if the private officers are not adequately trained and regulated. Additionally, unless the state has authorized private officers to possess the same powers as public officers, private officers have a restricted ability to use force and can only make citizens’ arrests, among other limitations.\textsuperscript{233} Therefore, private officers may be less effective in actually deterring crime in those states. Some states, however, more closely regulate private officers, deterring constitutional violations and affording officers powers more equivalent to public officers. A growing number of states are granting private law enforcement official police powers.\textsuperscript{234} Thus, as more states pass laws that imbue private law enforcement with abilities equivalent to public law enforcement, private law enforcement becomes a more adequate substitute.

Although private undercover officers would have different powers available to them, this lack of constitutional legitimacy should not bar their use, particularly

\textsuperscript{230} Forst, supra note 229, at 35 n.18 (explaining that privatizing law enforcement often provides substantial cost savings, as evidenced by several municipalities that have shifted to a purely private police force); id. at 45–46 (discussing struggles of some inner-city police forces to combat high volume of crime); see Baker & Goldstein, supra note 104 (describing NYPD’s shortage of undercover officers).
\textsuperscript{231} E.g., State v. Weaver, 752 S.E.2d 240, 245 (N.C. Ct. App. 2013) (finding that private officers were not state actors and had the right to make traffic stops that would otherwise violate the Fourth Amendment).
\textsuperscript{232} M. Rhead Enion, Note, Constitutional Limits on Private Policing and the State’s Allocation of Force, 59 DUKE L.J. 519, 541–52 (2009) (arguing that private police, when serving as state actors, should be deemed subject to the same constitutional limits).
\textsuperscript{234} Bruce Schneier, Private Police Forces, SCHNEIER ON SECURITY (Feb. 27, 2007, 6:02 AM), https://www.schneier.com/blog/archives/2007/02/private_police.html. Washington, D.C., for example, requires all private security employees who are armed to be licensed as “special police” officers, and this registration grants the private officers arrest powers. Goldstein, supra note 230. In New York, private officers have even participated in undercover investigations. Joh, supra note 229, at 380.
when they may bolster overall police legitimacy in some localities.\textsuperscript{235} As a body sworn to serve the public and obey the laws and constitutional constraints imposed upon it, the public police force possesses an intrinsic legitimacy.\textsuperscript{236} However, poor performance undermines this legitimacy, particularly in jurisdictions that lack the necessary funding to supplement their underperforming public police units with private officers, such as in inner cities.\textsuperscript{237} Therefore, although private law enforcement lacks the intrinsic legitimacy provided to public officers, the ability of private police to assist underperforming public police forces in poorer jurisdictions provides private law enforcement extrinsic legitimacy within those communities, as they are viewed as necessary and appreciated.\textsuperscript{238}

Although private undercover officers could suffer from the same issues regarding poorly selected and trained officers,\textsuperscript{239} this criticism could be cured by governmental regulation of standards for private law enforcement, such as by requiring SERE-type training. Licensing systems for private police companies already exist in some locations, but they are too lax, as license revocations are “extremely rare.”\textsuperscript{240} A licensing system for undercover programs could increase costs of private undercover officers, but barriers to use are superior to misuse of undercover techniques.\textsuperscript{241} The lack of constitutional limitations and inability to perform certain duties should not prevent private policing from offering a viable solution to the undercover problem, particularly since effective private policing actually increases overall police legitimacy. Adopting regulations for private law enforcement that mirror the guidelines for public police that have developed over decades could solve the mere “technical issues” that have arisen from the inconsistent treatment of public and private officers.\textsuperscript{242}

**B. Criminal Informants: A Flawed Alternative**

Historically, police departments have used informants as one alternative to undercover police. Informants provide a more budget-friendly alternative and also

\textsuperscript{235} Forst, supra note 229, at 35 (reporting that municipalities that have adopted entirely private police forces have seen no decline in quality of service).

\textsuperscript{236} Id. at 45.

\textsuperscript{237} Id. at 45–46.

\textsuperscript{238} Id. at 45–46 (reporting that the community policing movement has led to increased legitimacy within inner city police departments that previously struggled to combat the high volume of crime using only public officers).

\textsuperscript{239} Goldstein, supra note 229 (reporting that the opponents of private police forces primarily cite the lack of training and regulation as the largest issue facing such forces).

\textsuperscript{240} Forst, supra note 229, at 58.

\textsuperscript{241} If a jurisdiction is too under-funded to afford a properly run undercover program, then the public and the officers will be better served with no undercover program than with one utilizing mentally unfit officers.

\textsuperscript{242} Joh, supra note 229, at 377.
require less paperwork and oversight; the practice is essentially unregulated.\textsuperscript{243} In certain circumstances, they may even more effectively deter crime, as they have access to people and situations that undercover officers lack.\textsuperscript{244}

However, criminal informants represent a flawed solution.\textsuperscript{245} Because the use of informants is so unregulated, police departments often entice individuals who are facing criminal charges to serve as informants in order to avoid the charges.\textsuperscript{246} The informants are strung along and used in multiple buy-and-busts until the police are satisfied that they have paid off their debt.\textsuperscript{247} Several highly publicized cases have dragged the details of this practice to light, exposing the reckless choices police departments make every day in placing untrained, vulnerable individuals in dangerous situations.\textsuperscript{248} Not only are the informants themselves subject to the same lapses in judgment as undercover officers, but officers like Braszczok are responsible for them. Therefore, officers exercising poor judgment will result in improper action on the part of informants and may even put informants in danger. In 2009, Florida became the first state to pass a comprehensive statute regulating the use of criminal informants,\textsuperscript{249} but increased regulation of undercover police more generally is necessary before informants become a viable alternative to undercover officers.\textsuperscript{250}

In addition to the physical dangers untrained informants both face and cause, informants may also have fewer crime deterrence tools available to them under the law. For example, informants cannot always take advantage of the “consent once removed” doctrine, which is available to undercover officers.\textsuperscript{251} The dangers inherent in the use of untrained, often vulnerable informants make it an option that is riskier to the informants themselves and less effective in the deterrence of crime.\textsuperscript{252}

V. CONCLUSION

The extensive news coverage of Wojciech Braszczok’s involvement in the 2013 attack on Alexian Lien suggests that an undercover officer’s involvement in such

\textsuperscript{243} Sarah Stillman, The Throwaways, NEW YORKER, Sept. 3, 2012, available at http://www.newyorker.com/reporting/2012/09/03/120903fa_fact_stillman (citing informants expert’s declaration that the informant system is “cheap and easy”).

\textsuperscript{244} Id. (“Without them, narcotics operations would practically cease to function.”).

\textsuperscript{245} Id.

\textsuperscript{246} Id.

\textsuperscript{247} Id. (detailing the open-ended contracts that police often enter with criminal informants).

\textsuperscript{248} Id. (discussing death of Rachel Hoffman, along with several other young informants).

\textsuperscript{249} Confidential Informants, FLA. STAT. ANN. § 914.28 (West 2014); see Stillman, supra note 243 (describing the bill’s progress).

\textsuperscript{250} See infra Part III.

\textsuperscript{251} Khalil, supra note 68, at 1569–70. The consent once removed doctrine allows a law enforcement officer who has gained lawful entrance into a residence to call for backup to enter the residence in order to make an arrest. Id. at 1569.

\textsuperscript{252} Stillman, supra note 243 (declaring that undercover policing is less risky than using police informants).
an event is shocking. But disreputable behavior of undercover officers is not infrequent, particularly given the growing prevalence of undercover work. The psychological strain placed on undercover officers frequently causes them to lose their sense of self and alter their perception of right and wrong, causing them to violate the law and infringe on citizens' individual liberties. Through proper selection and training of undercover officers, as well as rules governing how and when to conduct undercover operations, police departments can ensure that undercover recruits have both the innate characteristics to withstand intense mental strain and the training necessary to prevent many negative psychological consequences. These measures will prevent overconfident, impressionable, and untrained daredevils like Braszczok from crossing boundaries and harming innocent members of the public, which will preserve the legitimacy of police departments in an age of escalating undercover work.

253. Justin Peters, Undercover Police Work Is Stressful and Depressing, SLATE (Oct. 10, 2013, 4:23 PM), http://www.slate.com/blogs/crime/2013/10/10/alexian_lien_wojciech_braszczok_undercover_police_work_is_stressful_and.html (explaining why the public should not be surprised by the involvement of an undercover officer in a violent event such as the one involving Braszczok).