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EXCLUSIVE: Agent misconduct revealed to be recurring theme at FBI; attempts at fixes fall short

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FBI agents have a long-standing pattern of breaking rules on investigations, and the bureau's efforts to solve them did not eliminate the problems, according to more than six years of internal reviews obtained by The Washington Times.

The previously undisclosed data covering 2013 to 2019 documents more than 1,600 instances of broken rules on cases involving investigations that do not require warrants, the use of informants and undercover agents, and sensitive matters involving people engaged in politics, government, the news media and religious groups.

Mike German, a fellow for the Brennan Center for Justice's Liberty & National Security Program, said the rule-breaking detailed in the audits is "the tip of the iceberg." Mr. German, a former undercover FBI agent who left the bureau in 2004, authored the 2019 book "Disrupt, Discredit, and Divide: How the New FBI Damages Democracy."

He said the problem is likely far worse than the public knows.

"The culture is one of impunity," Mr. German said. "The FBI leadership controls what gets approved and what doesn't, regardless of the rules."

The Times first reported in March about internal FBI audits in 2018 and 2019 showing misconduct by agents. The newly revealed documents portray a persistent pattern of rule-breaking since at least 2013.

The FBI is under scrutiny for its role in advancing Trump-Russia conspiracy theories and for reports of using counterterrorism resources to investigate parents who have spoken out at school board meetings about mask mandates, coronavirus shutdowns or politicized school instruction.

The FBI told The Times it works to correct problems identified in the audits and makes changes when necessary.

Cato Institute senior fellow Patrick Eddington said the audits show the bureau's efforts are not working and depict a consistent pattern of noncompliance. He uncovered the internal reviews in litigation against the FBI for access to its records.

"Despite their claims of increased training, increased awareness, etc., etc., etc., it continues," Mr. Eddington said of the rule-breaking. "And I think that speaks to a system that is really, really badly broken."

The more the FBI studied its employees' work, the more problems it found. The bureau reviewed six field offices' work beginning in 2013. When it discovered rule-breaking, the bureau quickly

expanded the review to cover all 56 of its offices to study the issue nationwide. It soon found more than 200 “compliance errors.”

Its next review found 126 errors in 112 cases that were active during a two-month window in 2014.

“As the referenced audit reports show, the FBI has voluntarily conducted multiple internal audits over the last decade to ensure that personnel are complying with the administrative requirements of an investigation,” the FBI said in a statement. “If an audit identifies an administrative error, the FBI takes action to correct the error, ensures appropriate training occurs, and, where appropriate, institutes programmatic changes.”

Among the biggest problems in agents’ work is the unauthorized use of investigative methods, Mr. Eddington said.

Unauthorized methods may involve physical surveillance for investigations that do not require a warrant, do not have approval and may examine people not accused of a crime.

FBI auditors found 29 “compliance errors” involving unauthorized use of investigative methods across 28 cases in a study examining 2015 through June 2016. A majority of that rule-breaking occurred on assessments, which are examinations that do not require warrants. Assessments may use surveillance without court orders and may rely on human sources or other information. The assessments can lead to fuller investigations.

Thirteen errors involved physical surveillance for assessments without approval, and three other errors involving physical surveillance on assessments had their descriptions redacted.

The actual number of rules broken in this way is undetermined, but such rule-breaking also happened in “predicated investigations.”

The FBI did not answer specific questions regarding the misconduct involving unauthorized methods and physical surveillance for assessments.

“Looking back at the records from the audit concluded in 2016, the FBI addressed non-compliance findings with the applicable field offices and made sure all personnel were familiar with the applicable requirements,” the FBI said in a statement.

In cases where the FBI deliberately allowed its agents to break the law to catch criminals, the FBI broke rules as well. A 2018 FBI audit showed 82 compliance errors in 466 open cases including “otherwise illegal activity” for confidential human sources.

The FBI also broke rules for sensitive investigations involving people engaged in politics, government, the news media, religious groups, and other things. A 2019 FBI audit showed the bureau broke its own rules 747 times in 18 months on such sensitive matters.

Determining a trend in FBI wrongdoing is difficult when relying on the bureau’s internal data because its audits examine different cases for different periods in different years.

A 2017 FBI audit examining July 2016 through September 2017 found 114 errors when reviewing preliminary investigations and consensual monitoring, in which the FBI intercepts a communication with the approval of one person involved, such as an informant wearing a wire.

A 2018 FBI audit of cases open from September 2016 to July 2018 spotted 171 errors when looking at types of assessments not addressed the previous year, as well as cases with recorded interviews and cases involving “otherwise illegal activity” by confidential human sources.

Mr. Eddington said the snapshots revealed by FBI audits may warp the bureau’s ability to correct internal problems.

“When they don’t go back around and check on exactly the same things year in and year out in order to see whether or not the corrective measures have actually stuck, it cannot, I think, give anybody any sense of confidence that a lot of these problems that have been uncovered have remotely been solved,” he said.

Congress is working to get answers.

Senate Judiciary Committee Chairman Richard J. Durbin, Illinois Democrat, and the committee’s top Republican, Sen. Chuck Grassley of Iowa, asked the inspector general to review FBI agents’ misconduct that was identified in the 2019 audit.

They also asked FBI Director Christopher A. Wray to hand over an unredacted copy of the audit. The senators said the amount of documented wrongdoing by agents suggested a “pattern and practice of evading the rules.”