

# The Washington Times

## FBI audit reveals employees', informants' rule-breaking in undercover ops authorized to break law

By Ryan Lovelace

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The FBI sometimes allows its employees and informants to break the law to catch criminals, but an internal 2018 FBI audit obtained by The Washington Times showed government employees and confidential sources broke rules along the way.

FBI employees and informants authorized to break the law in hundreds of cases violated the agency's rules dozens of times over nearly two years, according to the 2018 audit.

The FBI and attorney general's rules allow FBI officials and informants to disregard the law in undercover work but prevent certain conduct such as violence and illegal wiretaps and searches. The movement of drugs, payment of bribes, and selling of stolen goods all involve illegality that the government may approve.

The internal review showed 82 "compliance errors" in 466 open cases involving "otherwise illegal activity" for confidential human sources between Sept. 28, 2016, and July 22, 2018. "Otherwise illegal activity" refers to government-approved law-breaking that would be a crime if the federal government did not authorize it.

Cato Institute senior fellow Patrick Eddington said such authorized law-breaking is among the "most radical slippery slopes" facing law enforcement. He uncovered the 2018 audit in litigation against the FBI for access to government records.

"When you have the FBI essentially engaging in what amounts to the law enforcement version of covert action, which I think is a really pretty fair way to characterize it, I think everybody ought to be really concerned about that especially since it's just clearly not something that's gotten anything remotely in the way of the kind of attention that it really deserves," Mr. Eddington said.

Five instances of rule-breaking involved failure to get authorization for breaking the law. For example, one error involved breaking the law without authorization or an open confidential human source case. Another error involved law-breaking outside the scope of the illegal activity that the government authorized.

The majority of the rule-breaking, 77 errors, dealt with failure to document admonishments by special agents or other government officials regarding the FBI employees' illegal action.

The FBI told The Times that errors in the approval and authorization process included failure to upload an appropriate form to a file and the bureau did not explain what laws were broken.

The bureau said it takes action to correct errors discovered in its audits, including through training and “programmatically changes” when the FBI deems it necessary.

“While we strive to avoid any compliance errors, the review did not identify any intentional misconduct or activities undertaken for an improper purpose,” the FBI said.

None of the FBI employees’ or informants’ illegal conduct is revealed in the audit, and 35 other cases involving law-breaking identified by auditors were not examined in the FBI’s 2018 review.

The 2018 review was not the first time FBI auditors spotted rules broken in cases involving authorized law-breaking. A New York case involving violent crimes against children included illegal activity without a documented request, according to an FBI audit examining 2015 and 2016 obtained by The Times.

The rules for how FBI employees may break the law are littered with redactions shielding the rules from public view. The FBI’s 2016 Domestic Investigations and Operations Guide contains a section on permissible law-breaking but much of it remains hidden, including components about how to get approval, when to go to a lawyer, and which other agencies may get involved with FBI employees’ law-breaking.

FBI agents getting authorization to break the law is harder than it looks on TV dramas — or at least it used to be, according to former Rep. Mike Rogers, a Michigan Republican who was an FBI agent before becoming a congressman.

“You can get approval for a lot as long as it makes sense and it’s safe and no one gets hurt and there’s not a death, bodily harm, involved,” Mr. Rogers said. “There’s a lot you can do, which is why in some cases informants can move small amounts of drugs in order to facilitate a larger investigation and something like that.”

Mr. Rogers said he worked on organized crime matters in the Midwest, and he gave a hypothetical example of permissible law-breaking by the bureau as including fencing for a low-level mob informant in Chicago. In this scenario, fencing refers to the practice of selling stolen goods.

A prominent example of an FBI employee breaking rules that resulted in other crimes is the case of John Connolly, an FBI agent convicted of federal and state crimes related to his handling of the late Boston-area mobster James “Whitey” Bulger. Connolly cultivated the mobster as an informant, but was convicted of federal crimes in 2002 and state crime in 2008 stemming from his secret work enabling Bulger.

Connolly’s conduct was depicted on screen, including by actor Joel Edgerton in the 2015 film “Black Mass,” and it reportedly inspired actor Matt Damon’s character of a corrupt cop in the 2006 film “The Departed.” Connolly was granted release from a Florida prison last year, where he was serving a sentence for second-degree murder related to his hidden work with Bulger.

Mr. Rogers said that he cannot imagine the FBI ever approving violence and that any agent requesting such approval would probably get shunned by his or her colleagues.

Wrongdoing by FBI agents in other investigations documented in a 2019 audit first reported by The Times has sparked congressional inquiry.

The Senate Judiciary Committee's bipartisan leadership requested on Monday that Justice Department Inspector General Michael E. Horowitz review FBI agents' rule-breaking, and the senators asked FBI Director Christopher A. Wray to hand over an unredacted copy of the 2019 audit.

The 2019 audit showed FBI agents violating rules 747 times in 18 months while conducting sensitive investigations involving people engaged in politics, government, the news media, religious groups and other things.

The bureau previously told The Times that the 2019 audit's findings were unacceptable and that the bureau sought to fix the rule-breaking by changing its agents' training.

The House Oversight and Reform Committee also is digging into the FBI's conduct in domestic operations. The committee is awaiting a Government Accountability Office review of the FBI's surveillance of people through assessments, which GAO is undertaking in response to a request from two committee members, Reps. Jamie Raskin, Maryland Democrat, and Nancy Mace, South Carolina Republican.

Mr. Rogers says it is time the FBI has a hard conversation with itself or risk jeopardizing Americans' faith in the bureau.

"They used to teach us when I was a young FBI agent, 'Listen, those credentials, that's just one part of a bigger thing. When you open them up it represents the entire FBI when you're standing on that doorstep and that has to mean something,'" Mr. Rogers said. "And if it starts to not mean something, that's a very dangerous day for the United States."