

Washington Star

WASHINGTON, D.C., SUNDAY, NOVEMBER 26, 1978

Phone (202) 484-5000 CIRCULA
CLASSIFI

FBI Is Going Undercover to Combat Crime

By Robert Pear

Washington Star Staff Writer

The FBI under J. Edgar Hoover made little use of undercover agents.

Hoover, it is said, did not want his men — there were no female agents in those days — to work undercover for fear they might be tempted to engage in the very crimes they were supposed to be combating.

"Going undercover was loosening your tie," said one close watcher of the FBI, who recalls the official preference for clean white shirts and well-polished shoes.

But today that policy is changing. Spurred, among other things, by the success of the D.C. police-FBI fence operation known as the "Sting," the FBI is quietly expanding its undercover activities — not, however,

See FBI, A-4

without exposing itself to a whole new set of problems.

"THE UTILIZATION of undercover agents is a fairly new development in the FBI, although it's not new in law enforcement generally," says the FBI's new director, William H. Webster.

"We used to rely substantially upon informant information and forensic evidence, but we now have a large cadre of volunteer special agents acting in undercover capacities. We direct them against organized crime and against major white-collar crime efforts, and occasionally when we are able to do so effectively, we direct them against underground terrorist organizations."

Foreign counterintelligence — that is, the pursuit of foreign agents operating in the United States — organized crime and white-collar crime including public corruption are currently the FBI's top three priorities. All lend themselves to undercover investigations.

The FBI says its annual budget for undercover operations is now about \$3 million, or triple the amount in fiscal year 1977. Last year, the bureau estimates, such operations recovered more than \$100 million worth of property.

They were "extraordinarily productive," said John C. Keeney, a deputy assistant attorney general.

He said that undercover investigators are shifting their sights from street crime to phony financial schemes, waterfront corruption and frauds in government benefit programs.

HERE ARE A FEW samples of the FBI's recent undercover work:

- Undercover agents made contact with retailers selling pirated cassettes and soundtrack tapes of movies such as "Star Wars." The tapes, made in violation of copyright, were becoming a big industry. Agents set up a distributorship and identified manufacturers of the illegal recordings. Six persons were convicted.
- In Buffalo, N.Y., undercover agents identified a burglary ring and recovered \$700,000 worth of property, including a Rembrandt painting that had been stolen from a French museum in 1971.
- Agents in New York City set up a small garbage company to learn how organized crime dominated the trash-hauling industry at the expense of legitimate businesses. Two organized-crime figures were convicted as a result of the investigation.

• In Baltimore, FBI agents posed as contractors and formed a corporation for the purpose of infiltrating the inner circle of city officials and contractors. They confirmed allegations that a public works official was extorting kickbacks from contractors who maintained municipal buildings in downtown Baltimore. He was convicted along with several other city officials and a number of local contractors.

BUT WITH THE NEW emphasis on undercover work have come a host of complex questions.

At a recent public hearing, Sen. James G. Abourezk, D-S.D., listed a few of them:

• "May an undercover FBI agent violate state or federal law while engaged in pursuit of his investigative duties?"

• "May an undercover agent participate in the operation of a legitimate business without notice to the owner?"

• "May an agent use an alias or fabricated identity documents?"

Likewise, how do agents avoid the illegal entrapment of the people they pursue? Can they participate in criminal acts? Can an agent who penetrates an auto theft ring "go along" with a robbery to identify members of the ring? And how do undercover agents protect their identity when their criminal associates are arrested?

THESE ISSUES and many others will probably be addressed in a statutory charter being drafted for the FBI by Sen. Edward M. Kennedy, D-Mass., and other legislators in consultation with the Justice Department.

John Shattuck, director of the Washington office of the American Civil Liberties Union, said the ACLU has been concerned about one aspect of undercover agents: their use in "political organizations not suspected of any crimes, which are infiltrated and just watched for a long period of time."

In a speech last week to the B'nai B'rith Anti-Defamation League, Webster insisted that the FBI now does not investigate an organization "merely because it espouses ideas that are contrary to the common beliefs of the majority."

Nevertheless, Shattuck, speaking for the ACLU, said the FBI should be required to obtain a court warrant any time it wants to use agents in an undercover role.

Under such a procedure, resembling the procedure used before initiating wiretaps, Shattuck said, the FBI would have to demonstrate to a judge that there was "probable cause to believe a crime was being committed or was about to be committed."

Mary C. Lawton, an attorney in the Justice Department's Office of Legal Counsel, said that six or seven undercover cases have gone to the attorney general for personal review. Many more are examined by the Office of Legal Counsel or by a U.S. attorney.

"In some instances we get a written response," said Joseph E. Henahan, chief of the FBI's white-collar crime section. "In other instances, we get a verbal one."

Lawton acknowledged that the standards and procedures for undercover work are not written down. "We are still groping," she said. "It is new to us."

In cases where the FBI sees no major new legal issue, it may approve undercover operations with-

out review by lawyers outside the bureau.

UNDERCOVER agents make credible witnesses. They are subject to much greater control than informants, who are often motivated by a desire to be paid or to avoid prosecution.

In Washington undercover police and FBI agents conducted a fake fencing operation that recovered thousands of pieces of stolen property including credit cards, guns, typewriters, calculators, stereo sets, bicycles, motorcycles and automobiles.

The operation was widely considered a success. But the U.S. Court of Appeals sounded a cautionary note this year when it ordered a new trial for a District man who said he had been induced to sell guns by the undercover officers. The court faulted the trial judge for not instructing the jury about what constitutes entrapment.

Undercover techniques have long been an accepted part of narcotics investigations. Purchase of narcotics by an undercover agent is not considered a violation of the law, although if done by anyone else it would be.

The Drug Enforcement Administration, which like the FBI is part of the Justice Department, has written guidelines on undercover operations.

Under the guidelines a drug agent, with the approval of his superiors, can furnish legal chemicals "necessary to the commission of an offense." He can also supply "services in furtherance of illegal drug trafficking which are difficult to obtain," such as sophisticated chemical expertise.

An agent cannot supply illegal drugs except in "extraordinary cases" where the DEA administrator concludes they would lead to the prosecution of persons who finance or control a drug-trafficking operation.

TURNING TO some of the knotty problems that confront undercover investigators, the Justice Department's Lawton says that an FBI agent can obtain a driver's license under a false name.

That might be a criminal offense. But under an old legal theory, she said, "state law cannot bind a federal agent if to do so would interfere with his performance of his federal duty."

FBI agents try to inform state officials in advance, but that is not always possible.

"Obviously," Lawton said, "we cannot adopt an 'anything goes' attitude simply because the conduct involved may aid in an investigation. It is just as obvious, however, that we cannot conduct undercover operations under a stricture which prohibits any violation of any federal or state law."