

The BLT: The Blog of Legal Times

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DOJ, FBI Investigation Manuals Sought in FCPA Case

Defense lawyers representing a group of arms industry defendants who are charged in an international bribery conspiracy are demanding access to internal Justice Department and FBI manuals that govern the planning and execution of undercover operations.

The lawyers say the reliability of the government's undercover sting, which last year culminated in the arrest of 22 people, is central to the defense. FBI audit reports that the defense lawyers have received show certain alleged violations occurred during the course of the sting.

Among the alleged violations, according to a FBI report: a confidential source was allowed to travel internationally without approval and a source was directed to "participate in an embezzlement and wire fraud scheme with one subject without the appropriate [approval]."

BuckleySandler partner David Krakoff said today at a hearing in the case in Washington federal district court that some defendants are likely to argue entrapment.

Krakoff and Drinker, Biddle & Reath partner Charles Leeper said in court papers in May the government has refused to produce internal documents that govern the procedures the FBI was supposed to follow in planning and conducting the undercover operation. The defense lawyers also want to know how much money the government sunk into the case.

A Justice lawyer, Joey Lipton, said today in court that the government is in continued talks with the defense lawyers about the manuals. Lipton declined to comment in any detail about the classification of the manuals. He said DOJ and FBI officials were discussing the defense lawyers' request for the information.

Krakoff and Leeper said in court papers that the requested documents include the FBI's Field Guide for Undercover and Sensitive Operations, the Confidential Human Sources Policy Manual and the Confidential Funding Guide.

Posted by Mike Scarcella on September 07, 2010 at 04:40 PM in [Crime and Punishment](#), [Current Affairs](#), [Justice Department](#), [Travel](#) | [Permalink](#)
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Professor,

This information is clearly Brady. Go read Justice Souter in *Kyles v. Whitley* where he explains that the defense is entitled to attack the "integrity" and "reliability" of the police investigation and show the jury "sloppiness" in police investigative methods. The guidelines are promulgated to ensure the integrity and reliability of the undercover methods to prevent the

apprehension of innocent citizens. The "ploy" here is to get documents that may help establish innocence just as Justice Souter has directed us.

Posted by: mark | [September 10, 2010 at 04:26 PM](#)



Strange. Law enforcement's failure to follow its own internal procedures is not a defense to a crime - it's not even a component of the entrapment defense as used in the federal courts (which focuses only on the defendant's predisposition to commit the crime). This is either an attempt to get leverage by shaming the DOJ, or a publicity stunt, or a completely novel approach to criminal defense. This might be a defense in an administrative agency hearing, but not in a criminal case.

Posted by: [Prof. Dru Stevenson](#) | [September 07, 2010 at 11:03 PM](#)

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