

Division had been asked to write a background memo on FBI burglary procedures, and in proper bureaucratic fashion, the paper is headed: "Black Bag" Jobs.

"We do not obtain authorization for 'black bag' jobs from outside the Bureau," the memo said. "Such a technique involves trespass and is clearly illegal; therefore, it would be impossible to obtain any legal sanction for it. Despite this, 'black bag' jobs have been used because they represent an invaluable technique in combating subversive activities of a clandestine nature aimed directly at undermining and destroying our nation."

The document then reviewed the mind-boggling internal procedure used by the FBI for break-ins. The Special Agent in Charge (SAC) of a field office "must completely justify the need for the use of the technique" and at the same time "assure that it can be safely used without any danger or embarrassment to the Bureau." The special agent would do so in a memo either to Hoover or Tolson. The memo was then filed in the office of the assistant director of the FBI under—literally—the heading "Do Not File."

In September 1975 Charles Brennan, who had been Sullivan's deputy and succeeded him as assistant FBI director for domestic intelligence (the same Charles Brennan who carried that old beat-up satchel full of wiretaps over to Robert Mardian), patiently tried to explain to the Church committee* how to file a "Do Not File" memo. Brennan, a heavy-set, well-barbered and jowly Irishman with glasses, was trying to be a helpful witness, but the panel was understandably confused.

"The memorandum was not recorded in the usual record-keeping functions of the FBI," Brennan testified, "but would return to the assistant director and would be filed in his office under a 'do not file.'" Senator Richard Schweiker, the Pennsylvania Republican, did not seem at first to understand:

SENATOR SCHWEIKER: If it had been filed in the normal procedure, and then somebody subsequently removed it from the normal file and destroyed it—why wasn't it done that way?

MR. BRENNAN: [Incredulously] There would have been a record of it.

SENATOR SCHWEIKER: In other words, each file of the FBI was serialized, and as new information is put in a serial number is

* In September 1975 the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, headed by Frank Church, the Idaho Democrat, began hearings on federal intelligence and police agencies. The committee is hereinafter referred to as the Church committee or the Senate intelligence committee.

assigned, so... if it had been filed in the normal procedure and then removed, there would have been a gap as far as the number is concerned?

MR. BRENNAN: Yes sir.

Filing a memo under "Do Not File" has distinct overtones of Lewis Carroll, but it is by no means as loony as it sounds. Senator Schweiker noted that it was "really the perfect cover-up," because it permitted FBI officials to swear in affidavits or in court that "we've searched our files and records and there is nothing to indicate... we did a 'black bag' job." So the officials, Schweiker observed, "would be technically telling the truth... yet in fact it would be nearly total deception."

Schweiker then asked Brennan how FBI agents in the field learned how to follow this procedure: "Was this in the manuals of rules and regulations?"

"I frankly can't answer that, Senator," Brennan replied. "I don't believe there was any reference in any manual or the like that referred to 'black bag' jobs... I just don't know how they knew."

Somehow they knew, for Sullivan's 1966 memo also explained the separate steps required at the field level to make sure that no trace of a bag job showed up in the FBI files: "In the field, the Special Agent in Charge prepares an informal memorandum showing that he obtained Bureau authority and this memorandum is filed in his safe until the next inspection by Bureau Inspectors, at which time it is destroyed."

The Sullivan memo said that the FBI had used break-ins on a wide range of targets, including "several cases in the espionage field." But it made clear that foreign spies were not the only persons burglarized; through break-ins, "we have on numerous occasions been able to obtain material held highly secret and closely guarded by subversive groups and organizations which consisted of membership lists and mailing lists of these organizations."

And the memo indicated that "black bag" jobs had a valuable spinoff for the Bureau's COINTELPRO* operation of sabotaging groups and individuals whose political views the Bureau regarded as suspect. Through a recent "black bag" job, the memo said, the FBI had obtained the financial and membership records of three high officials of such an organization, "which we have been using most effectively to disrupt the organization and, in fact, to bring about its near disintegration... In short, it is a very valuable weapon which we have used to combat the highly clandestine efforts of subversive elements seeking to undermine our nation."

* COINTELPRO stands for Counterintelligence Program and is pronounced "co-in-tel-pro."