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## FBI Destroyed 47 File

By **GENE GOLDENBERG**  
Scripps-Howard Staff Writer

WASHINGTON — In what defense attorneys called the "grossest negligence imaginable" by Justice Department officials, more than half of the Government's files on illegal surveillance activities by the FBI have been destroyed.

In papers filed in Federal District Court here, lawyers for one of three former top FBI officials charged with directing illegal FBI break-ins asked for dismissal of the criminal indictments in light of "destruction by the Government of relevant documents, and evidence of a volume probably unparalleled in the history of criminal investigations in America."

Justice Department officials last

month told defense lawyers that 47 file folders had been destroyed by Robert Shackelford, former head of the FBI international security section.

But further examination revealed that 47 file drawers, not folders, containing more than 1500 folders of documents being sought by defense lawyers are missing and presumed destroyed, the court papers said.

The missing files represent 59 percent of the FBI's files on surreptitious entries and other illegal surveillance used in the search for fugitives of the radical Weathermen Underground during the early 1970s.

"More than half of what the Justice Department ever possessed is missing, and beyond merely knowing that there once were file folders with particular

titles, no one can possibly know what was in them," Brian P. Gettings, a lawyer for Mark Felt, the FBI's former No. 3 man, informed Chief U.S. District Judge William Bryant.

Felt, former FBI Director L. Patrick Gray and former FBI intelligence chief Edward Miller were indicted last April on criminal charges of conspiring to deprive American citizens of their civil rights by ordering FBI agents to break into and search their homes without warrants. The trial of the three former FBI officials is scheduled to start in January.

Miller's lawyer, Thomas Kennelly, earlier had filed for dismissal of the indictments after Francis Martin, a Justice Department trial lawyer in the case, admitted in a letter to defense

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## Drawers of Papers

lawyers that Shackelford had destroyed 47 file folders. Martin said the matter has been referred for possible "administrative action" against Shackelford.

In a new dismissal motion filed late Wednesday, Gettings said that on the basis of "newly discovered facts furnished the defense by the prosecutors" it is clear that the defense lawyers were "misled."

"The irony does not escape us that, while we were advised that merely 47 file folders were missing, it develops that, in fact, 47 file drawers are missing," Gettings said in his petition.

Gettings stressed his belief that Martin did not intentionally provide false information.

"He (Martin) and the present prosecutors were themselves misled by the

woeful negligence and ineptness of the former prosecution team headed by then-Assistant Attorney General Stanley Pottinger," Gettings said.

Pottinger, who headed the civil rights division under former Attorney General Edward Levi, initially led the FBI break-in probe. But Attorney General Griffin B. Bell placed the investigation under the direction of Deputy Attorney General Benjamin R. Civiletti.

Asked about the allegation that he had been responsible for the destruction of evidence, Pottinger, now in private practice here, issued a brief statement:

"Defense lawyers traditionally take liberties on behalf of their clients no matter how bizarre or outrageous."

Judge Bryant has scheduled a hearing for Nov. 29 at which time the question of the missing FBI files will be argued. Justice Department lawyers have said that it is up to the defense to show that the missing evidence damages their right to see all pertinent evidence.

Gettings argued in his motion for dismissal that it is the responsibility of the Government to prove that no prejudice has resulted from the destruction of documents.

Martin had earlier said the loss of the 47 file folders should not be grounds for dismissal of the case against the three former FBI officials. But he was not available for comment after the extent of file destruction was revealed in the latest court filings.