

# Justice Declines To Try 5 Agents

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The Justice Department disclosed yesterday that it has decided against prosecuting five FBI agents who had been briefly suspended last summer for their action in investigating an illegal wiretap in Virginia.

Instead, the department said in court papers filed in U.S. District Court in Richmond, it will begin administrative proceedings against some of the agents. The proceedings could result in dismissal of the agents, a Justice Department spokesman said.

No FBI agent has ever been indicted for a failure to carry out his duties as an

agent, Justice officials have said.

The decision against prosecuting the agents was approved by Attorney General Edward H. Levi and was disclosed in a request to allow portions of a nine-month grand jury investigation to be turned over FBI Director Clarence M. Kelley for the administrative proceedings. A hearing on the request is scheduled April 16 in Richmond.

The Justice Department officials also submitted in secret to U.S. District Judge Robert R. Merhige a list of the FBI agents likely to be disciplined if Merhige releases the transcript. FBI officials had stopped their own investigation into the wiretapping incident last summer when the Justice Department opened its grand jury investigation.

The investigation, which has involved two grand juries, grew out of the discovery at an Henrico County apartment building outside Richmond of an illegal wiretap said to have been placed by Richmond police. FBI agents were called to the apartment, but failed to confiscate the wiretapping device, a violation of Justice Department rules, according to sources close to the investigation.

The five Richmond FBI agents involved in the investigation were reinstated shortly after their suspension in August and assigned to the Washington area.