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Reconsideration Sought On Surveillance Rule

WASHINGTON (AP) — The American Civil Liberties Union plans to ask the Supreme Court to reconsider its 5-4 decision barring a suit against Army surveillance of civilians.

Aryeh Neier, ACLU executive director, said in New York he will base his motion on the fact Justice William H. Rehnquist

participated in the decision.

Neier said Rehnquist, a former Justice Department official, should have stepped out of the case because he testified in March 1971 about the suit before a Senate subcommittee.

The ACLU official said Rehnquist told the subcommittee that the suit was not properly before the courts.

Rehnquist was nominated to the Supreme Court by President Nixon last October. He was confirmed and took his seat in January. The freshman justice voted with the majority Monday to cancel out the suit as well as a full-dress Army-surveillance inquiry that had been ordered by the U.S. Circuit Court for the District of Columbia.

Chief Justice Warren E. Burger said in the majority opinion that the four individuals and nine groups who filed the free-speech case failed to show they suffered injury. Burger said courts should not sit "as virtually continuing monitors of the wisdom and soundness of executive actions."

Sen. Sam J. Ervin Jr., D-N.C., who helped argue the case in the court, described the decision as "unwise and wrong." He said he would introduce a bill today to hold military surveillance to strict limits.

That is, civilians could be shadowed by the military only on direct orders from the president and when necessary to guard against invasion and domestic violence.