Rehnquist Denies Conflict of Interest

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Supreme Court Justice William H. Rehnquist denied yesterday that he had a conflict of interest in two cases last term and said he had a duty to sit in both of them.

Rehnquist said it was both proper and legally required for him to sit in cases involving the Army's surveillance of civilians and the Justice Department's attempt to question an aide to Sen. Mike Gravel (D-Alaska).

Such explanations by justices are rare.

Rehnquist, who was under widespread attack by civil libertarians for casting crucial votes in the two 5-to-4 decisions, devoted a 16-page memorandum to the military surveillance case but dismissed the Gravel case with a footnote.

He said the American Civil Liberties Union had "seriously and responsibly urged" reasons for his disqualification in its petition for a new hearing by the other eight justices. But Gravel's petition "possesses none of these characteristics" and did not require extensive answer, he said.

Petitions filed last summer argued that Rehnquist had publicly prejudged the military surveillance case in congressional testimony when he was an assistant attorney general and that his involvement in the 1971 Pentagon Papers battle disqualified him from the Gravel case, which was a later chapter in the contest over publication of the Defense Department's secret Vietnam war documents.

Rehnquist said Gravel's petition "verges on the frivolous." He said his "peripheral advisory role" in the government's attempt to enjoin newspapers from publishing the Pentagon archives would have warranted his sitting out that case but not the one involving Gravel—"a different case raising entirely different constitutional issues."

The ACLU's clients were political dissenters claiming their rights were infringed by the Pentagon's data-collection aimed at civilians. The group said it was wrong for Rehnquist to judge the case after telling the Senate Constitutional Rights Subcommittee in 1971 that the case, then pending in lower courts, was meritless.

Rehnquist testified that he felt the plaintiffs had failed to make a case of specific injury to their rights of privacy and free speech. That was what the high court held in its 5-to-4 decision last June.

Rehnquist's contention that he had a duty to sit—that is, that he would be letting the court down if he disqualified himself in cases that were not clear-cut was the same argument he made as a Justice Department official in support of Supreme Court nominee Clement F. Haynsworth Jr. The Senate refused to confirm Haynsworth in 1969 after debate over whether he should have participated in certain cases on the Fourth U.S. Circuit Court of Appeals.

The justice said he was not counsel or a material witness in the surveillance case. He said many judges throughout history have formed and expressed opinions on "legal points" without disqualifying themselves later when the legal issue arose in their court.

Rehnquist did not comment directly on the complaint that his public testimony related to the validity of the particular lawsuit, not merely the same legal issue, which came before the Supreme Court.