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# Letters to the Editor

## Self-Disqualification of Justices

To the Editor:

Controversy continues to smoulder over the refusal of Justice William Rehnquist to disqualify himself in three sensitive cases decided last term. Legislation on the general question of judicial disqualification is sure to be introduced in the next Congress, yet there seems to be a curious pattern to Justice Rehnquist's behavior that has received no attention.

The Justice disqualified himself in two other cases. The first decided that the Government is not free to ignore Fourth Amendment restrictions on the use of wiretap evidence if it claims the wiretaps were done to protect "national security." The second held that the Government is not required to grant complete or "transactional" immunity to a witness called before a grand jury, but may compel testimony upon an offer of a less protective "use" immunity.

Justice Rehnquist had been scheduled to argue the Government's position in the immunity case before his appointment to the Court, but his involvement in the national security wiretap issue appears to have been limited to public statements in support of the practice. This was surely no greater involvement, and perhaps less, than his participation in matters connected with the three cases on which he chose to sit.

In 1970 Justice Rehnquist represented the Justice Department in a debate on the issue of a newsman's privilege to refrain from giving grand jury testimony about persons whose activities he had reported, and had

helped prepare departmental guidelines for subpoenaing newsmen. When the issue came before the Supreme Court, he voted to uphold the Government's position.

Justice Rehnquist testified before a Senate subcommittee, when an Assistant Attorney General, on the issue of Army surveillance of dissenters, expressing his opinion that a suit challenging that activity, then before the Court of Appeals, had little merit. When that very suit came before the Supreme Court, he voted to deny the plaintiff's claim.

While he had not been involved directly in the specific events leading to the legal contest between Senator Mike Gravel and the Justice Department over whether the Senator and his aide could be made to answer certain questions about his version of the Pentagon Papers before a grand jury, Justice Rehnquist played an active role in the Government's suit against various newspapers to prevent publication of those documents. When Senator Gravel's case reached the Supreme Court, he voted to uphold the Government's efforts to compel testimony.

Because of the division among his colleagues in the two cases in which he disqualified himself, Justice Rehnquist's participation could in no way have affected the outcome. In all three cases in which he participated, Justice Rehnquist cast the deciding vote. The results may be coincidental, but they raise grave questions, not merely about his judgment, but about his integrity.

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Stony Creek, Conn., Sept. 10, 1972