## Rehnquist Defends His Role in Decision On Spying by Army NYTimes-

Special to The New York Times WASHINGTON, Oct. 10-Justice William H. Rehnquist said

today that there was no impropriety in his participation in a Supreme Court decision last June although he had previously testified on the matter as a Justice Department official.

In the case, Justice Rehnquist voted with the majority in a 5-to-4 decision against antiwar activists who were seeking to bar the Army's surveillance of civilians. Mr. Rehnquist, a former Assistant Attorney General, had testified that there was no legal basis for the suit.

The Justice's unusual explanation was given in a 15-page memorandum that he issued as he rejected the activists' demand that he disqualify himself

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## REHNQUIST BACKS SPYING-CASE ROLE

Continued From Page 1, Col. 4 from a plea for a rehearing in

the case. The core of his argument was that all judges start on the Supreme Court with views

the Supreme Court with views on some matters that will later face them for decision, and the mere fact that they have ex-pressed those views should not disqualify them from judging. "Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa [clean slate] in the area of con-stitutional adjudication would be evidence of a lack of qual-ification, not lack of bias," he said. said.

He denied the motion of the American Civil Liberties Union, which had handled the case for the activists and had asked the activists and nad asked committee on Constitutional him to step aside now on the question of a rehearing. The full court also denied the A.C.L.U.'s motion for a rehear-ing of the case.

A.C.L.U.'s motion for a rehear-ing of the case. Justice Rehnquist also re-jected a similar motion by Sen-ator Mike Gravel, Democrat of Alaska, who charged that the Justice should not have taken part in another 5-to-4 ruling the same day. Justice Rehnquist had also been in the majority as the Court upheld the Justice De-partment's contention that Sen-ator Gravel and his aides could be questioned before a grand

part in another 5-to-4 ruling Justice Rehnquist had also been in the majority as the Court upheld the Justice De-partment's contention that Sen-ator Gravel and his aides could be questioned before a grand jury about their role in arrang-ing for the book publication of the secret Pentagon papers. Senator Gravel argued that Justice Rehnquist should step aside because he had helped prepare the Government's case in its efforts to stop The New

denied Senator Gravel a re-hearing. In the surveillance case, Laird V. Tatum, the Court hel that citizens who had been put un-der surveillance but also had not been harmed by it lack standing to stop the surveil-lance through court action. The effort to disqualify Jus-tice Rehnquist stemmed prima-rily from his testimony as an Assistant Attorney General in 1971 before the Senate Sub-disqualified."



William H. Rehnquist

Constitutional committee оп

Justice Rehnquist should step aside because he had helped prepare the Government's case in its efforts to stop The New York Times and The Washintog Post from publishing the papers. Justice Rehnquist dismissed ruled on the Fair Labor Stan-dards Act after he helped enact it as a Senator and that the late Justice Felix Frankfurter Justice Rehnquist dismissed ruled on labor injunctions, a that assertion today, saying it "verges on the frivolous" be-cause that suit had nothing to do with the issues in Senator Gravel's case. The court also denied Senator Gravel a re-hearing.