

Rehnquist Hits Disqualification

9/20/73

By John P. MacKenzie
Washington Post Staff Writer

Associate Justice William H. Rehnquist, whose possible participation in Watergate cases has caused widespread speculation among lawyers, said last night it was "unfortunate" when major issues are decided by less than the full nine-member Supreme Court.

Without committing himself on questions of disqualification from the expected high court Watergate tapes case,

Rehnquist said he deplored "a general current of opinion" of praise for judges who disqualify themselves and criticism for judges who refuse to do so.

The remarks of Rehnquist, whose role in a 1972 military surveillance case has been criticized by legal commentators in major law reviews and by the American Civil Liberties Union, were in a speech on judicial ethics prepared for delivery before the Associa-

tion of the Bar of the City of New York. An advance text was released here.

Interest in the justice's views on disqualification stems from his former position as assistant attorney general for legal counsel, a post which President Nixon described as his "lawyer's lawyer" when he nominated Rehnquist in 1971.

Although never implicated in any Watergate matter, Rehnquist worked closely with former Attorney General John

N. Mitchell and former White House counsel John W. Dean III, whose voices appear along with President Nixon's on tapes sought by Special Prosecutor Archibald Cox.

The justice was quoted during the summer as telling an audience that he probably would not sit in a case directly involving Mitchell, with whom he worked on such matters as the controversy over defeated Supreme Court nominee Clement F. Haynsworth Jr.

In his speech, Rehnquist said he questioned the American Bar Association's new code of judicial conduct under which ownership of a single share of a company's stock would disqualify a judge from sitting in a case involving that company.

He also questioned the authority of the U.S. Judicial Conference, the policy arm of the federal judiciary headed by Chief Justice Warren E. Burger, to make the ABA code binding on federal judges without action by Congress.

In his only direct reference to Watergate, Rehnquist told the bar association that he would never disqualify himself solely because the general subject came up at a dinner party. Any such damage would be harmless in view of his exposure to daily newspapers and television.