

Rehnquist Explains 1952 Memo on Race

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By John P. MacKenzie
Washington Post Staff Writer

Supreme Court nominee William H. Rehnquist said yesterday that his 1952 memorandum to the late Justice Robert H. Jackson represented Jackson's views, not his own, in saying that the court should adhere to the 19th century "separate but equal" doctrine of race relations.

In a letter to Senate Judiciary Committee chairman James O. Eastland (D-Miss.), Rehnquist said he recalled preparing the memorandum "as a statement of Justice Jackson's tentative views for his own use" when conferring with other justices on the pending case that became the famous 1954 school desegregation decision.

It was the first official explanation of the matter since Newsweek magazine on Sunday reported the existence of the memo, written when

Rehnquist was the justice's law clerk.

The nominee's supporters immediately proclaimed yesterday that the last obstacle to confirmation was removed, and they began the process of closing the debate.

Minority Leader Hugh Scott (R-Pa.), announcing that Rehnquist's letter "knocks

See NOMINEES, A14 Col. 1

NOMINEES, From A1

into a cocked hat" the arguments of opponents, filed a cloture petition signed by 27 senators, which automatically comes up for a vote on Friday. If the petition to close off debate is endorsed by two-thirds of those voting, then each senator would have one hour left to speak before the vote on the nomination.

Scott said the Senate, its other business drawing to a finish, could end its 1971 session by Saturday after what he predicted would be an overwhelming vote to confirm Rehnquist.

Sen. Birch Bayh (D-Ind.), floor leader of the opponents, protested that he couldn't recall such a move as early as the second full day of debate on a subject. He denied that his effort to state the case against Rehnquist could be termed a "filibuster," as Scott had already done.

The nominee, under attack for his record on civil rights and civil liberties issues, concluded his three-page letter to Eastland with this sentence:

"In view of some of the recent Senate floor debate, I wish to state unequivocally that I fully support the legal reasoning and the rightness from the standpoint of fundamental fairness of the Brown decision."

The decision in Brown vs. Board of Education was the 1954 desegregation ruling in which all nine justices, including Jackson, joined. It overruled the 1896 decision, Plessy

vs. Ferguson, which had held that states may maintain separate facilities for blacks and whites if the facilities are equal.

In his letter yesterday, Rehnquist, 47, an assistant attorney general, disavowed the memo's most provocative statement, which read: I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by liberal colleagues, but I think Plessy vs. Ferguson was right and should be reaffirmed."

The nominee, saying he was trying his best to reconstruct an event of 19 years ago, called that statement a "bald, simplistic conclusion" which "is not an accurate statement of my own views at the time."

A Justice Department spokesman was asked last night whether the controversial sentence, couched in the first person and alluding to "my liberal colleagues," could have been drafted by Rehnquist for the justice to recite. The spokesman said the sentence was entirely consistent with Rehnquist's explanation that the views expressed were those of Jackson.

Reacting to Rehnquist's statement that he now supports the 1954 decision, Bayh said he had "some cause to question the veracity of it" since the nominee had "ample opportunity" to express such support during his confirmation hearing. Rehnquist said he was asked only whether he considered the decision a binding precedent.

Eastland, who read the letter aloud in the Senate chamber, said, "I didn't think he should write this letter because the memorandum certainly was what was the law at that time, 1952."

An outspoken opponent of the 1954 ruling, Eastland said Rehnquist had been "badly mistreated" because the memo was disclosed and discussed with "no attempt to get the facts" behind it. Bayh said he had been trying to get those facts for three days.

Opponents of Rehnquist contend that the 1952 memorandum is part of a consistent pattern of the nominee's "hostility" to the advancement of minority rights.

His supporters have contended that controversial positions espoused by Rehnquist have represented views he has altered or positions taken as an advocate for the programs of the Nixon administration.