Rehnquist '52 Schools Memo Reported

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WASHINGTON, Dec. 5—William H. Rehnquist was reported today to have argued, when he was a law clerk at the Supreme Court, that the legal challenge to public school segregation then before the Court should be rejected.

Mr. Rehnquist, now awaiting Senate action on his own nomination to the Supreme Court, was a law clerk to Justice Robert H. Jackson during the 1952 court term.

According to an article published today by Newsweek magazine, Mr. Rehnquist expressed his views to Justice Jackson in a memorandum entitled "A Random Thought on the Segregation Cases."

The article quotes Mr. Rehnquist, who was then 28 years old, as arguing that the separate but equal" doctrine laid down by the Supreme Court in Plessy v. Ferguson in 1896 "was right and should be reaffirmed."

The disclosure of the argument by Mr. Rehnquist could provide ammunition to the liberals who are seeking to block his confirmation—both on the ground that he has stressed Government power over individual rights and because he opposed civil rights measures as an attorney in Phoenix, Ariz.

Mr. Rehnquist's nomination is expected to come up for a vote late next week, after the Senate votes on President Nixon's other nominee, Lewis F. Powell Jr., at 4 P.M. tomorrow. Both nominees are expected to win confirmation.

Mr. Rehnquist could not be reached for comment today about the Newsweek article, and the Justice Department's spokesmen declined to comment until they had seen the article.

The article quoted Mr. Rehnquist as opposing a school desegregation edict on the ground of judicial restraint. The 1½-page, single-space typed memorandum was said to argue that the Supreme Court had stopped striking down economic regulation statutes because "apparently it realized . . . it was not part of the judiciary function to thwart public opinion except in extreme cases."

He said the same principle should control the school desegregation issue. "Regardless of the Justice's individual views on the merits of segregation," the memo added, "it quite clearly is not one of those extreme cases which commands intervention from one of any conviction."

The memo continued:

"To those who would argue that 'personal' rights are more sacrosanct than 'property' rights, the short answer is that the constitution makes no such distinction. To the argument made by Marshall—Thurgood, not John—that a majority may not deprive a minority of its constitutional rights, the answer must be made that while this is sound in theory, in the long run it is the majority who will determine what the constitutional rights of the minority are."

In his testimony before the Senate Judiciary Committee, Mr Rehnquist said that his children now attended integrated schools in suburban Virginia, outside Washington, and that he considered integration of neighborhood schools a good thing.

In New York today the American Civil Liberties Union departed from what it said was a 51-year-old policy of not opposing candidates for public office, and said it would campaign against the confirmation of Mr. Rehnquist.

After a meeting today of the national board of directors of the A.C.L.U., Edward J. Ennis, chairman of the group, declared, "We know Mr. Rehnquist as a person committed to the notion that in every clash between civil liberty and state power, it is civil liberty that should be sacrificed."