

Rehnquist Says '52 Memo Outlined Jackson's Views

By FRED P. GRAHAM
Special to The New York Times

WASHINGTON, Dec. 8— Mr. Rehnquist had refused to comment on the matter, despite many inquiries, until today, when he set forth his explanation in a letter addressed to James O. Eastland, chairman of the Senate Judiciary Committee.

In the letter Mr. Rehnquist said that when he was a law clerk for Justice Jackson "the memorandum was prepared by me at Justice Jackson's request; it was intended as a rough draft of a statement of his views at the conference of the Justices, rather than as a statement of my views."

Mr. Rehnquist said that Justice Jackson "very definitely did not expect to welcome the incorporation by a clerk of his own philosophical view of how a case should be decided." Mr. Rehnquist added that the "quite imperious" tone of the memo was different than those usually drafted by law clerks for Justices.

Furthermore, Mr. Rehnquist said, the view that the "separate but equal" doctrine should be reaffirmed "is not an accurate statement of my own views at the time."

"I wish to state unequivocally," he concluded, "that I fully support the legal reasoning and the rightness from the standpoint of fundamental fairness of the Brown decision" that declared school segregation unconstitutional in 1954. Justice Jackson joined the unanimous Court in that decision.

The memorandum, as released by Newsweek, was captioned "A Random Thought on the Segregation Cases." Mr. Rehnquist said in his letter that it was entitled "Random Thoughts on the Segregation Cases."

The document made the argument that as a matter of judicial restraint the Supreme Court should not order desegregation of the schools, because to do so would be to read the Justices' own views into the Constitution.

"I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by 'liberal' colleagues, but I think Plessey V.

William H. Rehnquist said today that he was expressing the views of the late Justice Robert H. Jackson—not his own views—when he wrote a memorandum in 1952 saying that the "separate but equal" doctrine underlying school segregation was "right and should be reaffirmed."

This explanation in a letter to the Senate was termed "self-serving" by Senator Birch Bayh, Democrat of Indiana. He said aspects of it made him doubt the veracity of Mr. Rehnquist, who has been nominated to the Supreme Court.

However, the minority leader, Hugh Scott of Pennsylvania, declaring that Mr. Rehnquist's response had laid the matter to rest, filed a closure petition calling for a vote Friday on whether to cut off what he called "a lonely filibuster" by a small band of Senators opposing the nomination.

The closure vote, which must muster the support of two-third of the Senators voting in order to carry, is expected to be held at about mid-day on Friday. If it carries, a vote on the nomination could come later that day or on Saturday.

The action came shortly after Mr. Rehnquist's opponents suffered a setback in the form of a statement by Senator William Proxmire that he would vote to confirm the nomination.

The Wisconsin Democrat, who voted against both of President Nixon's previous nominees who were denied confirmation, said the Senate should not reject able nominees because it disagrees with their political views.

The memorandum has provided a major point of attack by the opponents of Mr. Rehnquist's nomination during the two days that it has been under debate on the floor of the Senate.

These opponents, who allege that Mr. Rehnquist is insensitive to civil rights and civil liberties, seized upon the memorandum when it was published by Newsweek magazine last Sunday.

criticized Mr. Rehnquist's consistent support of Nixon Administration actions that he said have chipped away at American freedom.

"Never in the course of American history have so few taken so much from so many, and William Rehnquist was there every step of the way," he said.

Proxmire Decision Criticized
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MADISON, Wis., Dec. 8— Wisconsin's Democratic National Committeeman, Donald O. Paterson, announced today Senator Proxmire decision to vote for Mr. Rehnquist and urged the Senator to reconsider.

"Mr. Rehnquist's position on civil rights is anathema to the principles of the Wisconsin Democratic party and the people of Wisconsin," said Mr. Paterson in a message to Senator Proxmire.

Ferguson was right and should be re-affirmed," the final paragraph of the memorandum says. It was initialed by Mr. Rehnquist.

After reading the letter, Senator Eastland criticized Newsweek for not checking with Mr. Rehnquist for his explanation before publishing it.

Senator Scott called the incident an example of "flash excitments" that Mr. Rehnquist's opponents hoped to spring if the debate were permitted to continue.

The exchange over the Rehnquist memorandum produced one of the few flashes of actual debate in the discussion, which has largely consisted of long speeches by Mr. Rehnquist's opponents to a vacant Senate chamber.

This has led to the filibuster charges by Senator Scott, and countercharges by Mr. Rehnquist's opponents that his sup-

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porters are avoiding the debate for fear that lively discussion would focus the attention of the Senate and public upon their charges.

In his statement today, Senator Proxmire said he was not put off by the fact that Mr. Rehnquist, an Assistant Attorney General, had stated strong law-and-order views.

"I share the conviction expressed by President Nixon that we need a better balance between the forces of law enforcement on the one hand and law violators on the other," he said.

Senator John O. Pastore, another Democrat who frequently takes liberal positions, said he was still undecided but asked, "After all, how far can you go in carrying a man's past on his back?"

In a long opposing speech, Senator Edward M. Kennedy, Democrat of Massachusetts,

criticized Mr. Rehnquist's consistent support of Nixon Administration actions that he said have chipped away at American freedom.

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