

Rehnquist's Missing Letter (1955)

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“I think that *Plessy v. Ferguson* was right and should be reaffirmed.”

In December 1952, Supreme Court law clerk William H. Rehnquist wrote that privately to his boss, Justice Robert H. Jackson. In December 1971, this Rehnquist memorandum, defending the constitutionality of racial segregation under *Plessy's* “separate but equal” doctrine, was discovered. Rehnquist's own Supreme Court confirmation then hung in the balance. He claimed that the memorandum reflected Jackson's views, not Rehnquist's. He was confirmed, but his explanation triggered charges that he had lied and smeared the memory of one of the Court's most revered justices.

Professor Brad Snyder and I have published an essay that pertains to this subject. Our essay, “Rehnquist's Missing Letter: A Former Law Clerk's 1955 Thoughts on Justice Jackson and *Brown*,” analyzes a newly discovered document, a letter that Rehnquist wrote to Justice Felix Frankfurter in 1955, criticizing Jackson.

This 1955 Rehnquist letter reveals what he thought about Justice Jackson shortly after the Supreme Court, including Jackson, declared in *Brown v. Board of Education* that school segregation was unconstitutional¹ and, just months later, Jackson's death. We explain that this 1955 Rehnquist letter was not known during his Supreme Court confirmation hearings in 1971 and 1986, and that it is now missing and may have been stolen from Justice Frankfurter's Papers in the Library of Congress. We argue that Rehnquist's 1955 letter represents his disappointment with

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¹ See 347 U.S. 483 (1954), available at www.law.cornell.edu/supct/html/historics/USSC_CR_0347_0483_ZS.html.

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Brown and the beginning of his outspoken criticism of the Warren Court. We contend that the letter says less about how Rehnquist felt about Jackson and more about Rehnquist's disappointment over his Justice's role in *Brown*, the most important Supreme Court decision of the 20th century.

For our essay, posted on SSRN, [click here](#).²

For a NEW YORK TIMES story about our essay and these issues, [click here](#).³

For YouTube video excerpts from an August 2010 speech in which attorney and former Jackson law clerk E. Barrett Prettyman, Jr., explained the process by which Justice Jackson hired him in 1953 to be his solo law clerk, succeeding Rehnquist and his co-clerk, [click here](#).

² See Brad Snyder & John Q. Barrett, *Rehnquist's Missing Letter: A Former Law Clerk's 1955 Thoughts on Justice Jackson and Brown*, 53 BOSTON COLLEGE L. REV. 631-60 (Mar. 2012).

³ See Adam Liptak, *New Look at an Old Memo Casts More Doubt on Rehnquist*, N.Y. TIMES, Mar. 19, 2012, available at http://www.nytimes.com/2012/03/20/us/new-look-at-an-old-memo-casts-more-doubt-on-rehnquist.html?_r=2.