

BURGER CAUTIONS LOWER TRIBUNALS ON BUSING ORDERS

Says Rulings by High Court
Do Not Require Balance of
Races in Every School

BUT HE REFUSES A STAY

Declines to Intervene in a
Desegregation Plan Set
in Winston-Salem Area

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WASHINGTON, Aug. 31 —

Chief Justice Warren E. Burger said today that judges in lower courts were misreading the Supreme Court's opinions if they were ordering busing of pupils in the belief that the Court required racial balance in every school.

He made the observation, however, in an opinion that he issued as he refused to stay the enforcement of a lower court's decision that ordered extensive busing to achieve racial balance in the school system of Winston-Salem-Forsyth County, N. C.

Mr. Burger said that it would be inappropriate for him, acting in his capacity as the Justice who supervised the judicial circuit that includes North Carolina, to interfere at this stage in the Winston-Salem desegregation program. Schools opened there yesterday under the busing order that came before him today, and the Supreme Court is in recess.

The Swann Case

But by writing a 10-page opinion, which is unusual in denials of stays, the Chief Justice underscored his misgivings over busing orders that were being handed down by lower court judges who read the Supreme Court's rulings as requiring racial balance in the schools.

Courts across the South have ordered widespread busing this

fall in the belief that it is required by the Supreme Court's decision of last spring, *Swann v. Charlotte-Mecklenburg Board of Education*. In that case, the Justices unanimously upheld a busing plan that had been intended to achieve the same racial balance in each school in Charlotte, N.C.

Today, Mr. Burger wrote that "if the Court of Appeals or the District Court read this Court's opinions as requiring a fixed racial balance or quota, they would appear to have overlooked specific language of the opinion in the *Swann* case

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to the contrary."

He then quoted language from the *Swann* decision that said "the constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole."

He said that judges must calculate a school district's racial balance as a starting point to decide "whether in fact any violation existed," but that the judges were not required to use busing in an attempt to achieve this balance in each school.

Term Not Defined

In the *Swann* decision, the Supreme Court called upon the lower courts to "make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." Because the Court did not define "desegregation," many Federal judges in the South, including Federal District Judge Eugene A. Gordon Jr. in the Winston-Salem case, have aimed at racial balance.

In Winston-Salem, the student population was 72.5 per cent white and 27.5 per cent Negro. The judge ordered busing of 34,000 of the district's 50,000 students, based on a plan that the school board felt it was

required to propose to achieve racial balance in each school.

On Aug. 23, the school board filed papers asking Mr. Burger to stay implementation of the busing plan, saying that the average busing time for each child was one hour a day and that the plan was impractical.

In denying the request, he said that the papers had been filed too late and contained insufficient information for him to overturn Judge Gordon's busing order.