

racial basis. Cf. *United Public Workers v. Mitchell*, 330 U.S. 75, 100 (1947); *Wieman v. Updegraff*, 344 U.S. 183, 191-192 (1952). See *Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc.*, 372, U.S. 714, 721 (1963). This is particularly evident from the Supreme Court's positive indications that non-discriminatory allocation of faculty is indispensable to the validity of a desegregation plan. *Bradley v. School Board of the City of Richmond*, supra; *Rogers v. Paul*, supra. This court has already said, 'Such discrimination [failure to integrate the teaching staff] is proscribed by *Brown* and also the Civil Rights Act of 1964 and the regulations promulgated thereunder.' *Kemp v. Brown*, supra, p. 22 of 352 F. 2d.

In a recent decision of the Eighth Circuit, *Clark v. Board of Education of Little Rock School District*, No. 18, 368 (December 15, 1966), the Court required of the Little Rock, Arkansas School Board (slip op., p. 15) a "positive program aimed at ending in the near future the segregation of the teaching and operating staff." The Court stated (slip op., p. 13):

"We agree that faculty segregation encourages pupil segregation and is detrimental to achieving a constitutionally required non-racially operated school system. It is clear that the Board may not continue to operate a segregated teaching staff. *Bradley v. School Board of City of Richmond*, 382 U.S. 103 (1965). . . . It is also clear that the time for delay is past. The desegregation of the teaching staff should have begun many years ago. At this point the Board is going to have to take accelerated and positive action to end discriminatory practices in staff assignment and recruitment."

The Court then proceeded to outline the essential ingredients which such "action" must include (pp. 13-14):

"First, . . . future employment, assignment, transfer, and discharge of teachers must be free from racial consideration. Two, should the desegregation process cause the closing of schools employing individuals predominately of one race, the displaced personnel should, at the very minimum, be absorbed into vacancies appearing in the system. *Smith v. Board of Education of Morriston School District*, No. 32, supra. Third, whenever possible, requests of individual staff members to transfer into minority situations should be honored by the Board. Finally, we believe the Board make all additional positive commitments necessary to bring about some measure of racial balance in the staffs of the individual schools in the very near future. The age old distinction of 'white schools' and 'Negro schools' must be erased. The continuation of such distinctions only perpetrates inequality of educational opportunity and places in jeopardy the effective future operation of the entire 'freedom of choice' type plan."

In a suit brought by pupils in Oklahoma City, Oklahoma, the Court of Appeals for the Tenth Circuit recently affirmed a lower court order requiring that by 1970 "there should be the same percentage of non-white teachers in each school as there now is in the system." *Board of Education of Oklahoma City Public Schools, Independent District No. 89 v. Dowell*, No. 8523 (January 23, 1967), slip op., p. 22, affirming, 244 F. Supp. 971, 977-978 (W.D. Okla. 1965). The District Court had stated (p. 978) that such a requirement provided "for stability in school faculties during the integration process, . . . keying the change to personnel turnover figures indicating that approximately 15% of the total faculty is replaced each year." Although the evidence showed that there was no difference in the quality of performance between the white and non-white personnel in the school system, the Court of Appeals held (p. 22) that where "integration of personnel exists only in schools having both white and non-white pupils, with no non-white personnel employed in the central administration section of the system," there is "racial discrimination in the assignment of teachers and other personnel." Relying on the Supreme Court's decisions in *Bradley* and *Rogers*, the Court stated (p. 22) that "[t]he [lower court] order to desegregate faculty is certainly a necessary initial step in the effort to cure the evil of racial segregation in the school system."

Numerous district courts, in applying the law as elucidated by the Supreme Court and the courts of appeal of their various circuits, have entered orders in school desegregation cases requiring the desegregation of faculty and staff. In entering such orders, a few of the district courts have also set forth their reasons in memorandum opinions. One such opinion was issued by the United States District Court for the Eastern District of Virginia in refusing to approve a plan submitted by the School Board of Greensville County, Virginia, on the