More recently that same Court had occasion to note: [3]

> "The Constitution forbids unconstitutional state action in the form of segregated facilities, including segregated public schools. School authorities, therefore, are under the constitutional compulsion of furnishing a single, integrated school system."

The concurring portion of an opinion of Judges Sobeloff and Bell in *Bradley* v. *Board of City of Richmond* [4] stated in part:

> "Affirmative action means more than telling those who have long been deprived of freedom of educational opportunity, 'You now have a choice.' In many instances the choice will not be meaningful unless the administrators are willing to bestow extra effort and expense to bring the deprived pupils up to the level where they can avail themselves of the choice in fact as well as in theory. A court before approving a plan, must scrutinize it in detail to satisfy itself that the assumptions upon which the plan is predicated are actually present. The district judge must determine whether the means exist for the exercise of a choice that is truly free and not merely pro forma. This may involve, considering, for example, the availability of transportation, the opportunity to participate on equal terms in the life of the school after the pupil's arrival, and any other circumstances that may be pertinent."

Other courts also have recognized the obligation of the school system to do more than refrain from interfering with transfers. In *Wright* v. *County School Board of Greensville County*, —— F. Supp. —— (E.D., Va.; (January 27, 1966) the Court stated:

> ". . . This circuit has recognized that local authorities should be accorded considerable discretion in charting a route to a constitutionally adequate school system. Freedom of choice plans are not in themselves invalid. They may, however, be invalid because the 'freedom of choice' is illusory. The plan must be tested not only by its provisions, but by the manner in which it operates to provide opportunities for a desegregated education. In this respect operation under the plan may show that the transportation policy or the capacity of the schools severely limits freedom of choice, although provisions concerning these phases are valid on their face."

Similar holdings are contained in: *Dowell* v. *School Board of Oklahoma City, Okla.*, 244 F. Supp. 971 (W.D. Okla., 1965); *Bell* v. *School Board of City of Staunton, Va.*, ———, F. Supp. ——— (W.D. Va., Jan. 5, 1966) and *Kier* v. *School Board of County of Augusta*, ——— F. Supp., ——— (W.D. Va., Jan. 5, 1966).

In *Dove* v. *Parham*, 282 F. 2d 256 (1960), the Court of Appeals for the Eighth Circuit recognized the obligation of a school district "to disestablish a system of imposed segregation".

2. *May the Commissioner require in every such case of ineffectiveness that the school system make substantial further changes in staffing patterns of the schools to eliminate identifiability of schools as intended for students of a particular race?*

That the identifiability of a school as intended for Negro students is a restriction upon the right of free choice and inconsistent with a valid desegregation plan, can scarcely be denied. Whether a school is so designated by the use of clear words to that effect or whether it is so identified through other indicia including staff assignments, the school system has not met its responsibility to eliminate dual school arrangements, as already described in this memorandum.

> "The defendants by the segregation of teachers, continue to maintain three clearly-delineated Negro schools. '[T]he presence of all Negro teachers in a school attended solely by Negro pupils in the past denotes that school a "colored school" just as certainly as if the words were printed across its entrance in six-inch letters'. *Brown* v. *County School Board*, 245 F. Supp. 549, 560 (W.D. Va. 1965)" *Kier* v. *School Board of County of Augusta*, *supra*.

Moreover, for some time cases have indicated that in the consideration of particular plans for desegregation, some involving zoning and other choice, the

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[3] *Singleton* v. *Jackson Municipal Separate School District*, —— F. ——, (C.A. 5th, Jan. 26, 1966). The Court did recognize that administrative problems may justify an orderly transition period during which the desegregation may take place, but even so, it held that this transition may not prevent any individual child, even though in a grade not yet reached by the desegregation plan, from exercising his right to transfer.

[4] 345 F. 2d 310, 323, (C.A. 4th, 1965). Reversed on other grounds, —— U.S. ——, 15 L. Ed. 2d 187, 86 S. Ct. 224 (1965).