No. 1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

OLIVER BROWN, MRS. RICHARD LAWTON,
MRS. SADIE EMMANUEL, ET AL.,
APPELLANTS,

vs.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE
COUNTY, KANSAS, ET AL.,
APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS.

SUPPLEMENTAL BRIEF FOR THE STATE OF KANSAS ON QUESTIONS 4 AND 5 PROPOUNDED BY THE COURT.

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KELLEY PRINTING CO., TOPEKA

TABLE OF CONTENTS

TABLE OF CASES

STATUTES CITED

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STATEMENT

On May 17, 1954, this Court announced its opinion that racial segregation in public education *per se* is a denial of the equal protection of the laws guaranteed by the

Fourteenth Amendment to the Constitution of the United States At the same time the Court sought an expression of the views of the parties relative to the specific decrees to be entered in this case and other cases now pending More particularly, the Court's request is as follows:

> "In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the court for reargument this term" (*Brown v Board of Education of Topeka, et al*, 347 U S 483, 495)

The following is respectfully submitted in an effort to comply with that request

THE QUESTIONS

Questions 4 and 5 mentioned above, were set forth in the Court's order of June 8, 1953, and are quoted hereafter:

> "4 Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,
>
> "(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
>
> "(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregation systems to a system not based on color distinctions?
>
> "5 On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court

will exercise its equity powers to the end described in question 4(b),

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?" (*Brown v Board of Education of Topeka, et al*, 345 U S 972)

GENERAL CONSIDERATIONS

We pause at the outset of these comments to empha size that we do not approach the present questions as an adversary Heretofore in the arguments of Decem bei, 1952, and upon reargument in December, 1953, we presented as fully as we could the arguments in justifica tion of the statute authorizing certain boards of educa tion in Kansas to provide for the education of Negro children in separate schools of equal facility The argu ments then advanced appeared consistent with the re ported decisions of this Court, the Supreme Court of Kansas, and Appellate Courts elsewhere However, the issue in this case has now been determined *contra* to the position we then urged We accept without reservation

or equivocation the Court's declaration that "in the field of public education, the doctrine of 'separate but equal' has no place" We assure the Court that the resources of state government will be employed to effectuate the decision in the public schools of Kansas Hence, the sole purpose of this brief is to supply such information as may assist the Court in finally disposing of the Kansas case

Of the several cases at bar we suspect that the Kansas case may be least complex Several considerations point to this conclusion In earlier arguments we have pointed out that the practice of segregation in public education has never been widespread among the communities of the state Traditionally, Kansans abhor inequality Except in the case of the elementary schools in cities of the first class, the statutes of Kansas specifically prohibit school authorities from making distinctions based on race color or previous condition of servitude (G S 1949, 21 2424) Moreover, we think it is significant that quite apart from the Courts decision of May 17, 1954, and through the normal exercise of local autonomy, an accelerated adjustment from existing segregated systems to a system not based on color distinction has been in progress throughout the state Indeed, it might well be argued that the instant case is moot by reason of the action of the Topeka Board of Education more fully described in its separate brief filed herein

Segregation has never existed in Kansas as a matter of state policy Section 72 1724, General Statutes of Kan-

sas of 1949, which has been declared unconstitutional in the present litigation, purported to permit rather than to require segregated elementary schools in the areas to which it applied Those segregated systems that have been maintained, have existed by virtue of action of local boards of education Hence we do not contemplate that the termination of segregation in Kansas will be the oc casion for any policy adjustment on a state level No provision of the Constitution of Kansas is affected by the Court's decision of May 17, 1954 There is no oc casion for state legislation to provide for or implement the process of de segregation The abandonment of seg regated school systems will not require the alteration of any policy established by the State Department of Pub lic Instruction or any other state administrative agency Emphatically, de segregation will produce no cultural problem nor will it disrupt an established way of life In fact, there has been no significant amount of protest on the part of any group of Kansas citizens to the elimi nation of separate schools Indeed, the prevailing atti tude has been one of approval Presumably, political party platforms reflect attitudes accepted by their mem bers Note the statement quoted hereafter from the 1954 platform of the Republican Party of Kansas:

> "We hail the recent historic decision of the Su preme Court of the United States as upholding the traditional position of the Republican Party that there can be no second class citizens under our Amer ican form of government" (***)

In view of the foregoing, we cannot, in candor, sug gest that *at state level* there are any barriers, legal or

otherwise, to the immediate termination of such segregated public school systems as may exist in Kansas The problems incident to the de segregation process will be encountered on the local level only, and will be proced ural rather than substantial pragmatic rather than es sential At the same time, they are problems that obviously cannot be resolved forthwith by resolutions of boards of education or even by decrees of this Court Time will be required for deliberation, for decision and for adjustment How much time? We do not presume to say We suggest only that in those cases where, as in Kansas, responsible state and local officials are proceeding in diligence and good faith to effect the adjustment required by the Court's opinion herein, such efforts should be recognized by this Court and be permitted to proceed with a minimum of judicial direction

ARGUMENT ON QUESTIONS PROPOUNDED

The briefs submitted by the several parties and *amici curiae* prior to the December 1953 arguments, reveal little significant divergence of view relative to the prin ciples applicable to Questions 4 and 5 Hence, we dis cuss the questions somewhat summa ily

> "4 Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,
>
> (a) would a decree necessarily follow providing that, within the limits set by normal geopraphic school districting, Negro children should forthwith be admitted to schools of their choice, or
>
> (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to

> be brought about from existing segregated systems to a system not based on color distinctions?"

The assumption stated has now become the established principle of law The questions go to the power of a court of equity

We think that a decree providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, does not necessarily follow the opinion of May 17 On the other hand, we believe that this Court, in the exercise of its equity powers, may permit an effec tive gradual adjudgment from existing segregated sys tems to a system not based on color distinctions The very fact that these questions are now being argued, some seven months after the decision that segregation violates constitutional rights, suggests that the power to postpone compliance does exist

The decree must seek to reconcile the personal and present interest of the Negro citizen, whose constitutional rights have been violated, with the public interest in safeguarding the integrity of the school system To il lustrate, we call attention specifically to a statement con tained in the separate brief of the Board of Education of Topeka submitted prior to the December, 1953, ar guments:

> "If this Court should enter an order to abolish segregation in the public schools of Topeka 'forth with', as suggested in Question 4(a), the Topeka Board would, of course, do its best to comply with the order *We believe, however, that it would prob ably require that the regular classes be suspended,*

> *while the many administrative changes and adjustments are being made, and while the necessary trans fers of and reassignment of students and teachers are being made.* Important decisions would have to be hurriedly made, without time for careful investi gation of the facts nor for careful thought and re flection Most decisions would have to be made on a temporary or an emergency basis We believe the attendant confusion and interruption of the regular school program would be against the public interest, and would be damaging to the children, both negro and white alike " (pp 4-5) (Italics supplied)

We think it cannot be disputed that a court of equity has power to avoid such a consequence

The reports abound with authority for the proposition that it is the duty of a court of equity "to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief " (*Eccles v Peoples Bank*, 333 U S 426, 431)

> " equity will administer such relief as the exigencies of the case demand at the close of the trial " (*Chapman v Sheridan-W yoming Coal Co Inc* 338 U S 621, 630)

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case Flexibility rather than rigidity has distinguished it The qualities of mercy and practicality have made equity the instrument for nice adjustment and re conciliation between the public interest and private needs as well as between competing private claims " *(Hecht Co v Bowles,* 321 U S 321, 329-330)

> "It is familiar doctrine that the extent to which a court of equity may grant or withhold its aid, and

the manner of moulding its remedies, may be affected by the public interest involved" *(U S v Morgan,* 307 U S 183)

"A court of equity has discretion, in the exercise of jurisdiction committed to it, to grant or deny relief upon performance of conditions which will safeguard the public interest" (*Securities Exch Comm v U S R & Imp Co*, 310 U S 434, Syl 7)

"In short, the judicial process is not without the resources of flexibility in shaping its remedies" (*Addison v Holly Hill Co*, 322 U S 607, 622)

We presume that no principle of equity jurisprudence is more familiar than that illustrated by the foregoing statements It would seem that the authorities cited would preclude further argument on Question 4 However, this proposition has been discussed at some length in the supplemental brief for the United States on reargument filed herein prior to the arguments in December, 1953 We call the Court's attention specifically to the discussion and authorities contained in that brief on pages 152 to 167, inclusive, and suggest that we are in substantial agreement with the views expressed therein

Question 5 assumes that 4(b) has been answered in the affirmative The Court then inquires:

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

> "(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

This question compels our attention to the inherent limitations on the judicial power We doubt that the Court contemplates the judicial development of a plan for the de segregation of the schools of Kansas or any other state If such action is contemplated, we doubt that it is legally or practically feasible The Court may determine, as it has determined, that the segregated school system heretofore maintained in Topeka, Kansas, violates the Constitution of the United States It may determine whether a gradual adjustment to a system not based on color distinctions is authorized However, it cannot tell the Topeka Board of Education what non segregated school system will be substituted for the one heretofore maintained, nor can it prescribe the course to be followed in effecting the substitution These are determinations that must necessarily be made with refer ence to local conditions—conditions that were not ger mane to the question of whether segregation *per se* is unconstitutional and hence are not reflected by the rec ord now before the Court They are determinations that must be made by local officials who are familiar with local conditions and who are responsible for local educa tional policy and for the general administration of the school system We urge that those officials be given the

maximum latitude consistent with the rights of appel lants

We emphasize that in the exercise of appellate juris diction, the Court's considerations are limited by the record forwarded from the court of original jurisdiction The present questions have appeared in the case since the trial in the court below Hence, before any detailed decree could be framed, additional evidence would prob-ably be required We suggest that the District Court is the proper forum to hear evidence and determine facts

> "The framing of decrees should take place in the district courts rather than in the appellate courts" (*International Salt Co v United States,* 332 U S 392)

A review of the precedents would indicate that this Court, as a matter of policy, has heretofore refused to frame detailed decrees in cases involving segregation in education In those cases where school facilities have been held unequal and where administrative action has been required to secure equality, the Court has not at tempted to determine precise standards to be observed by the parties in order to finally dispose of the case Rather, the Court has been content to remand the case to the lower court for further proceedings consistent with and in conformity with its opinion (*Sipuel v Board of Regents,* 332 U S 631; *Missouri ex rel Gaines v Canada, Registrar,* 305 U S 337, and *Henderson v United States,* 339 U S 816)

Thus, we answer part (a) of Question 5 in the nega tive This answer obviously precludes comment on part

(b) Similarly, we answer part (c) in the negative We believe that the only order necessary in the present case, indeed, the only one justified by the circumstances, is one reversing the judgment of District Court, and re manding the cause to said court with directions to enter an appropriate decree We suggest further that the Dis trict Court be directed to retain jurisdiction of the cause until such time as the maintenance of segregated schools by Appellee Board of Education is finally terminated Implicit in such an order would be the power of the District Court upon appropriate motion by any of the parties to deal with special problems arising during the transition period

Finally, we suggest that the decrees of both this Court and the District Court should provide for a minimum of judicial control

> "It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless ob struction of the domestic policy of the states "
> (*Alabama Pub Serv Comm v Southern Ry Co*, 341 U S 341, 351)

Wherever responsible state and local officials are pro ceeding in good faith to make the adjustments required by the Court's opinion of May 17, 1954, we suggest that their efforts be recognized and that they not be hedged by detailed judicial orders

CURRENT DE SEGREGATION TRENDS

In its separate brief, the Topeka Board of Education has advised the Court of its action to terminate its seg regated schools Hence, we comment on that situation only briefly Since September, 1953, Topeka has moved from universal segregation in its elementary schools, to a system consisting of 12 integrated schools, two par tially integrated, five schools maintained exclusively for white students and four attended only by Negroes One hundred and twenty three Negro students now attend mixed elementary schools We deem this significant pro gress

In other communities of Kansas, boards of education not parties to this suit are initiating similar policies Since these arguments have apparently come to tran scend the original parties and issues, we trust it is not improper to comment on the experience of Kansas in areas other than Topeka

Section 72 1724, General Statutes of Kansas, 1949, au thorizing segregated elementary schools, applied to twelve cities of the state One city, Hutchinson, never exercised the power the statute purported to confer Two cities, Wichita and Pittsburg, maintained separate elementary schools for many years, but for reasons of local policy, terminated the practice in 1952 The recent action of Topeka is mentioned above and is detailed in the sepa rate brief of its Board of Education Six other cities of the state have, during the past year, commenced or completed the process of de segregating their public schools

Atchison Atchison, a city of 13,000 persons, is located on the boundary between Kansas and Missouri Its population is about 10% Negro Segregation has been maintained in the public elementary schools of Atchison since the establishment of the system It may be significant that the city was founded in 1854 by persons of pro slavery sympathies and for years the southern tradition was manifest in the community Prior to the present school year four elementary schools, each serving a fixed geographical area, have been maintained exclusively for white students and one elementary school has been maintained for Negroes On September 12, 1953, the Board of Education adopted the following resolution:

> "That the plan of abolition of segregation in the public schools of Atchison heretofore established by the Board of Education and which has been effected in grades seven through twelve be intensified so as to complete the plan throughout grades one through six as soon as practicable"

Subsequent thereto, on June 9, 1954, the policy was implemented by the adoption of a further resolution, the text of which is set forth hereafter:

> "Motion was made by Mr Thorning that segregation of negro pupils be discontinued as of this date in all Atchison city school districts with the exception of the Martin Lincoln district; thereby eliminating the necessity for operation of the school bus transporting pupils to Lincoln school; also, that beginning with the school term of September 1955, all segregation be ended in the Martin Lincoln district under such a plan as will promote the best interests of the students in our school system"

At the present time in excess of 25% of the Negro students of the city are attending mixed schools The Board of Education anticipates that the process of desegregation will be completed by September 1, 1955 In addition to the integration of students as above set forth, a Negro has been employed as an elementary class room teacher, teaching predominately white 6th grade classes School administrators anticipate that all Negro teachers presently employed, will be assimilated into the integrated system

Lawrence Seat of the State University, Lawrence is a city of 24,000 population About 7% of the people are Negro Segregated schools had been maintained since prior to 1869 The process of assimilating the Negroes into white schools was apparently begun about 1916, with the result that during the past few years only one school had been maintained exclusively for Negroes Subsequent to the decision of the Supreme Court of May 17, 1954, the Lawrence Board of Education ordered the immediate termination of segregation in all its public schools In addition a Negro teacher was employed in the school system to teach special classes in junior high school and to teach physical education in the elementary schools, all of which classes are attended by predominately white students The seriousness with which this community approaches the problem is indicated by the following comment of a school official in a communication addressed to the Attorney General of Kansas:

> "We recognize that some Kansas communities have problems more grave than ours—and we have some hurdles certainly

> "Does integration mean the mixing of white and colored pupils only? What is the status of the col ored teacher? This year we employed one colored teacher on the basis of qualification for the job—but we recognize the possibility of unfavorable reaction when a colored person is employed as a teacher of a self contained room Such adaptations must come slowly but must be achieved if integration is to be more than a term referring to mixing of colored and white pupils "

Leavenworth Leavenworth, a city in excess of 20,000 inhabitants, has a Negro population of about 10% The segregated system of elementary schools was established in 1858 and has been maintained consistently since that time At present two elementary schools are maintained exclusively for Negro students, whereas nine are attended only by white The policy announced by the Leaven worth Board of Education of August 2, 1954, indicates the reaction of the people of this community to the de cision of May 17 The statement of policy is set forth hereafter:

> "Pupils who enter the kindergarten or the first grade in the fall of 1954 will be permitted to enroll in the school of the district in which they reside regardless of race Such negro pupils regardless of residence may continue to attend Lincoln and Sum ner schools which will be adequately staffed with cap able Negro teachers It will be necessary for a time to establish attendance districts for the Lincoln and Sumner schools in order to carry out this policy It is the belief of the Board of Education that the negro people in the Leavenworth community may desire to continue their schools as presently oper ated for a term of years during the transition period

"The Board of Education in this statement of policy believes it to be consistent with the Supreme Court decision in that it is starting in an orderly way to move away from compulsory segregation

"It is believed that integration, when desired by the parents, can best be initiated at the lower grade levels Those colored pupils who enroll in non negro staffed schools at the kindergarten or first grade level may continue in the school through subsequent grades

"It is believed that it will be best for the individ ual if integration begins at the primary level Also, the existing school system has been established in a certain pattern, and because of limited facilities, the pattern of enrollment cannot be suddenly changed The Board of Education is required to provide school facilities and to frame policies for the welfare of all pupils

"The Board will continue to study the problem and restate its policies consistent with the expressed desires of the people within the framework of the Supreme Court decision

"The Board solicits the cooperation of all citi zens in making an orderly transition from a segre gated to a non segregated school system It looks to the State Legislature, the State Department of Public Instruction and the Attorney General for counsel in the continuous reframing of its policies consistent with the Supreme Court's interpretation regarding the constitutionality of the Kansas statute under which Leavenworth schools have operated since 1879

"The Board will make an effort to follow the sug gestions and recommendations of the Supreme Court as promised to be made by that body subsequent to October, 1954"

The first positive step taken by the Leavenworth school system consistent with its declared policy has been the admission during the 1954-55 school year of kindergarten and first grade pupils to the school nearest their resi dence regardless of race Presumably next year the Board intends to extend this policy to the second or higher grades, although a positive statement to this ef fect has not been announced The following comment of a public school official of Leavenworth suggests one of the problems incident to de segregation, and the com munity's approach thereto:

> "It is the intention of the Leavenworth Board of Education to be completely fair in the treatment of its faithful and competent negro teachers It has been in the cities maintaining segregated schools where the opportunity for employment has existed for negro teachers There will be questions raised as to why we cannot suddenly integrate our teach ers in these cities, and there will be a few sporadic cases for publicity purposes to illustrate that negro teachers can be used indiscriminately There are frequent cleavages between teachers and pupils at best Some pupils resist authority and for various reasons have to be disciplined, restrained, or cor rected This often puts parents on the defensive and causes them to question or resist the teacher's authority Now, if that teacher of a white child should be a negro, the cleavage would be magnified fifty to a hundredfold I am sure you are well aware of this
>
> "The Leavenworth Board believes that for a con siderable length of time, negro teachers will be used in schools attended almost entirely by negro pupils It is perfectly logical to ask, why cannot we inte grate them in one magnanimous action? What about

communities like Hutchinson who has never had segregation? Have they ever employed a negro teacher or are they likely to start employing them now? In my judgment, the solution will have to be carefully and slowly introduced You and I and most board members will readily agree to the righteousness of complete integration from the standpoint of our established principles of decency, christianity and democracy However, there is a sufficient number of biased and prejudiced persons who will make life miserable for those in authority who attempt to move in that direction too rapidly As a consequence, many of us will be accused of 'dragging our feet' in the matter, not because of our personal feelings or inclinations, but because in dealing with the public, its general approval and acceptance is indispensable One cannot force it, he can only coax and nurture it along "

Kansas City Kansas City has a total population of about 130,000, 20 5 percent of which belong to the Negro race It is adjacent to Kansas City, Missouri It is perhaps significant that the proportion of Negroes in Kansas City, Kansas, is greater than in such southern cities as Dallas, Louisville, Saint Louis, Tulsa, Miami and Oklahoma City, and only slightly less than that of Baltimore Kansas City is the only community in Kansas where by virtue of law segregated high schools have been maintained Prior to the present school year the City of Kansas City has maintained seven elementary schools, one junior high school and one high school exclusively for its 6000 Negro students, while twenty two schools were attended by more than 23,000 white students On August 2, 1954, the following statement of

policy was adopted by the Board of Education of Kan sas City:

> "The members of the Board of Education, meet ing as a committee of the whole, propose the adop tion of the following statement of policy with refer ence to the Supreme Court decision on segregation:
>
> "The Board of Education of the City of Kansas City of the State of Kansas hereby declares its in tent to abide by the spirit as well as the letter of the Supreme Court's decision on segregation Spe cifically, the Board of Education proposes:
>
> "1 To begin integration in all the public schools at the opening of school on September 13, 1954
>
> "2 To complete the integration as rapidly as class room space can be provided
>
> "3 To accomplish the transition from segregation to integration in a natural and orderly manner de signed to protect the interests of all the pupils and to insure the support of the whole community
>
> "4 To avoid any disruption of the professional life of career teachers
>
> "With these objectives in mind, the Board of Edu cation directs the Superintendent of Schools within the framework of this policy declaration to be re sponsible for developing and applying the plan of integration "

The plan subsequently adopted permitted Negro stu dents in kindergarten and grades 1, 6, 7, 10, 11 and 12 to enter the school of their choice within normal geo graphic limitations Because the bulk of the Negro population is concentrated in one area of the city, the termination of compulsory segregation will not elimi

nate schools attended exclusively by Negroes However, a total of 233 Negro students are now attending mixed schools, and approximately 1000 more live in areas where the process of amalgamation is now in progress A report to the Attorney General's Office, dated October 12, 1954, from a school administrator indicates:

> "The announced program by the Board of Education was well received by whites and negroes alike and it is felt that integration in our schools is accepted and will be completed when classroom space permits We are now engaged in the completion of a 6½ million dollar building program which includes the immediate problem before us"

School officials anticipate that subsequent to the completion of the amalgamation program all Negro teachers presently employed in the system will be retained

Parsons Parsons is located in southeastern Kansas some twenty miles from the Oklahoma border It is a city of about 15,000 population, less than 10% of whom are Negroes Prior to the current school year four elementary schools were maintained for white students and one for Negroes Commencing with the current year, the Board of Education announced a policy to the effect that whenever possible and practical, restrictions on school attendance are to be immediately removed and segregation eliminated In line with this policy, segregation was eliminated in three of four ward elementary school areas at the beginning of the 1954 55 school year The remaining school area is being operated on a segregated basis because of crowded conditions The separate Negro school is located in this ward Consequently

every child may attend an elementary school in the ward in which he resides

It is the present policy of the Board to delay integration of the schools of the fourth ward until additional school facilities will be completed At the present time twenty six Negro students in Parsons are attending mixed elementary schools, while one hundred and forty three are required to attend the school maintained exclusively for Negroes

Salina Segregation was terminated in the City of Salina prior to the opening of the current school term In view of the fact that less than 3% of the city's 27,000 people are Negroes, the problems incident to assimilation were slight Prior to the present school term, one school was attended by all Negroes of the city The present policy of the Board of Education permits all students to attend the school located nearest their homes

Cities Reporting no Action Only two cities, Coffeyville and Fort Scott, report that action by their Boards of Education has been delayed, pending final determination of this case In these cities an aggregate of about 400 Negro students attend three segregated schools Both cities are located in Southern Kansas, and school officials indicate that there has been no local sentiment in favor of the termination of the policy of segregation In one city, it is reported that the only protest against the prospect of desegregation has come from the Negro citizens However, in each of these communities local school officials stand ready to take such action as may be consistent with the policies to be announced by this Court and the best interests of their people

CONCLUSION

We respectfully submit that all considerations ger mane to the present issues require that the decree of this Court do no more than reverse the judgment of the District Court and remand the cause to said court with directions to enter judgment consistent with the opinion herein and to retain jurisdiction thereof until said judgment be complied with

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