



Joshua M. Dunn. *Complex Justice: The Case of Missouri v. Jenkins*. Chapel Hill: University of North Carolina Press, 2008. x + 226 pp. \$37.50 (cloth), ISBN 978-0-8078-3139-7.

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## School Desegregation and the Courts: *Missouri v. Jenkins*

Joshua Dunn's *Complex Justice* is a fairly focused account of *Missouri v. Jenkins*, a school desegregation case originating in Kansas City, Missouri in 1977. First ruling seven years later in 1984, federal district judge Russell Clark concluded that the Kansas City, Missouri School District (KCMSD) and the state of Missouri were "operating an unconstitutionally segregated school district" (p. 3). Judge Clark then oversaw an extensive, decade-plus effort to desegregate and improve education in Kansas City, directing the KCMSD to create magnet schools housed in first-rate facilities. He (and others) believed this approach would draw white students back into the city's public schools and, in the process, reverse the trend toward segregation and racial isolation while also improving education for African American students. As Dunn chronicles the case and its evolution, he is particularly interested in judicial policymaking and how its implications differ in emergent areas, in which "higher courts have not set down precise policy boundaries," and mature areas, in which "doctrines are settled" (p. 6). He carefully considers and explains how Judge Clark's decision, which some have characterized as extreme because of high costs and judicially mandated taxation, was logically, and even conservatively, grounded in careful application of judicial precedent. Dunn also analyzes a series of crucial Supreme Court decisions on school desegregation and concludes that, while they each made sense individually, they were collectively contradictory and severely limited the options judges and school officials could draw on in devising strategies for countering school segregation.

In many respects, the story of race and the KCMSD is typical and familiar, combining elements of a moderate southern border state with those of non-southern urban districts. A year after the 1954 *Brown* decision, the KCMSD initiated a relatively uncontroversial school desegregation plan. With a focus on neighborhood schools

(most of which closely mirrored existing patterns of segregated housing) and a flexible transfer policy, the Kansas City approach had a limited impact on white students. Very few were assigned to majority-black schools and most schools remained at least 90 percent black or white (p. 36). Essentially, the district eliminated segregation, but did little to actively pursue full integration or racial balance. Noting this, Dunn points out that the KCMSD approach was well within the legal parameters and expectations of the time and concludes "it is simply erroneous to condemn the KCMSD for not following a standard no one could have imagined at the time" (p. 38).

The black community mounted periodic protests calling for increased integration, but none were particularly sustained, perhaps in part because superintendent James Hazlett was a good communicator and appeared sympathetic. He proposed a more proactive integration plan in 1968, which was rejected by the school board just weeks before the assassination of Martin Luther King, Jr. In 1973, a local leader affiliated with the Southern Christian Leadership Conference (SCLC) initiated a short-lived lawsuit calling for extensive busing and additional funding. However, the most significant push for increased integration came from outside Kansas City. In the early 1970s, the juxtaposition of evolving legal standards—the Supreme Court had recently established that the existence of racial imbalance, regardless of intent, was considered evidence of unconstitutional segregation—and the persistence of racial imbalance in the Kansas City schools led to an investigation by the Department of Health, Education, and Welfare (HEW). Dunn suggests that in several years of back-and-forth, neither HEW nor the school district were very effective at proposing solutions to the problems of racial isolation, in part because the district was becoming increasingly black (with a black majority, that grew steadily, from 1970 on) and because neither white nor black parents supported busing to achieve

integration. These issues were exacerbated by a serious financial decline that paralleled the growing predominance of African American students. In 1977, under pressure from HEW (but without their approval), the district implemented a moderate desegregation plan. More significantly, the district also filed suit against HEW, the Department of Housing and Urban Development (HUD), the Department of Transportation (DOT), the state of Missouri, and eleven suburban school districts, arguing that the combined policies of these various entities all contributed to racial isolation in the Kansas City schools and that, alone, the district would be unable to resolve the problems. According to Dunn, the school officials behind the suit actually cared little about integration, but saw the lawsuit as a way to leverage badly needed money. Since 1969, the last year that white students were in the majority, Kansas City had failed to support bonds or tax levies to support public education. As a result, facilities and educational quality were deteriorating rapidly.

Dunn writes that in 1983, when the trial began for *Missouri v. Jenkins*, “The KCMSD’s schools were obviously in a state of physical and educational disrepair... The children of Kansas City were clearly suffering an injustice” (p. 57). It was apparent that the KCMSD was failing to provide a good education for the majority of its students, most of whom were African American. According to Dunn, although there was considerable judicial precedent for finding the district’s racial imbalance evidence of unconstitutional segregation, a number of factors constrained Judge Clark in his September 1984 ruling and in his approach to devising a remedy. In particular, because the Supreme Court had ruled in the 1973 *San Antonio v. Rodriguez* case that there was no constitutional right to equitable funding for education and had also banned interdistrict solutions in the 1974 *Milliken v. Bradley* case (which eliminated the option of metropolitan area busing between the city and suburbs), the Judge’s only constitutional recourse was a finding of unconstitutional segregation (not inequitable funding or education). Moreover, Clark had to devise a solution that was focused on racial balance (rather than financial equity and educational quality for African Americans) and was limited to the municipal district.

Before the trial, Judge Clark had already realigned the KCMSD from plaintiff to defendant and dismissed the DOT from the suit. In a series of rulings, he also dismissed the suburban districts, HEW, and HUD before finding against the state and the KCMSD. Confronted with a resistant state government, over the next decade Clark consistently ruled in favor of the plaintiff’s lawyer, Arthur Benson, who was working closely with the school

district. (Although the district was technically a defendant, it had originated the suit and received a significant financial windfall when Judge Clark ordered the state to pay for three-quarters of the remedial plan and mandated tax increases to help the district cover its share.) Dunn explains that “From 1985 to 1990, [Judge Clark] would double the property taxes on residents and businesses within the KCMSD, raise the income taxes of individuals who worked within the KCMSD, order hundreds of millions of dollars in capital improvements for the KCMSD, and convert over three-quarters of the KCMSD’s schools into magnet schools” (p. 82). Although this was a far more aggressive approach than many school desegregation plans in similar communities, Dunn points out that the Eighth Circuit Court of Appeals consistently upheld the bulk of Clark’s rulings. Moreover, in 1990 the U.S. Supreme Court refused to consider the details of Clark’s remedial plan (implying their approval) and actively affirmed his power to mandate property tax increases to fund his remedy. Moreover, with this ruling, the Supreme Court confirmed and extended judges’ “power to fund their remedies through tax increases” (pp. 188-189).

In the early 1990s, however, the high court began reasserting the distinction between de jure and de facto segregation. In a series of decisions, the Court began to frame segregation (or resegregation) in terms of private choice and no longer characterized racial imbalance as a problem. In this context, the Supreme Court once again took up *Missouri v. Jenkins* and, in a closely contested 1995 decision, overturned Judge Clark’s recent order to raise teacher salaries (something that had been proposed as a way to compete with suburban districts for high-quality teachers). In a decision that marked a further retreat from aggressive enforcement of *Brown*, chief justice William Rehnquist characterized this attempt to attract high-quality teachers as an unconstitutional interdistrict remedy for an intradistrict problem. Most importantly, the majority opinion essentially prohibited “voluntary methods of drawing white students and teachers from the suburbs” (p. 167), further limiting the potential options for addressing persistent urban school segregation. Formal judicial oversight of the KCMSD lasted another eight years, but this essentially marked the end of Judge Clark’s effort to use magnet schools housed in first-rate facilities to foster integration and improve educational quality.

Dunn focuses on the legal, policymaking aspects of the case, but includes enough detail about the Kansas City school district and the local black community to illustrate a number of the difficult challenges our coun-

try faces in confronting the pernicious legacy of state-sponsored segregation and inequality. African Americans have always been divided over integration and for many integration was always more a means to an end (quality education) than an end in itself. Given that, it is not surprising that Kansas City's black community more consistently articulated support for quality education than for integration. Unfortunately, one of the problems that African Americans have also had to confront and that Dunn does not really address, is the persistent underfunding of black-only or black-majority schools. Given this enduring reality, there is little to suggest that our country will fund high-quality equitable education, regardless of race, without some measure of meaningful integration.

And yet, it is easy to understand the black community's anger when the judicial focus on integration translated into greater resources for white students. Given persistent white reluctance to attend the Kansas City public schools, Judge Clark's initially rigid 6-4 black-white ratio for magnet schools meant far greater access for the white students than black, many of whom were blocked from schools even when they were under-enrolled. Similarly, white suburban students received door-to-door taxi rides to city magnet schools, while black students negotiated a complicated city-wide transportation system. Perhaps most important, there is little to suggest that Clark's approach improved the educational quality for most African American students. (The district also grew more segregated.) Moreover, following a pattern that is repeated throughout the history of desegregation, African Americans were largely excluded from any meaningful role in decision-making—from the first desegregation plan in 1955 through the evolving remedial plans that emerged from *Missouri v. Jenkins*.

In some ways, Dunn appears to use the black community's eventual opposition to the remedial plan as a final indictment of an approach that he concludes was an absolute failure and an unfortunate result of constrained judicial policymaking. At the same time, he appears to repeatedly downplay the impact of race and racism, both in terms of the problems facing the Kansas City schools and in terms of the broader national challenge of pro-

viding quality education, regardless of race. To some extent, a detailed and nuanced analysis of these complex issues is well beyond the scope of Dunn's book, but given the significant ways white supremacy still shapes differential educational opportunities, it seems problematic to obscure or downplay the role of racism without offering extensive support. Moreover, given the centrality of evolving legal responses to "de facto" segregation and the significance of "intent" in defining unconstitutional segregation, Dunn might do well to more fully engage with recent historical work that provides detailed analyses of the de jure basis of much that we consider de facto segregation.[1]

#### Note

[1]. Although Dunn includes Thomas Sugrue's important post-World War II study of Detroit in his bibliography, he does not appear to engage with the arguments that Sugrue and other historians make about the many ways local, state, and federal governments created and reinforced segregation (and inequality) in housing and education. Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, NJ: Princeton University Press, 1996). See, for example, Thomas J. Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York: Random House, 2008); Matthew Countryman, *Up South: Civil Rights and Black Power in Philadelphia* (Philadelphia: University of Pennsylvania Press, 2006); Jeanne Theoharis, "I'd Rather Go to School in the South": How Boston's School Desegregation Complicates the Civil Rights Paradigm," in *Freedom North: Black Freedom Struggles Outside the South, 1940-1980*, ed. Jeanne Theoharis and Komozi Woodard (New York: Palgrave Macmillan, 2003); and Jeanne Theoharis, "Alabama on Avalon": Rethinking the Watts Uprising and the Character of Black Protest in Los Angeles," in *The Black Power Movement: Rethinking the Civil Rights-Black Power Era*, ed. Peniel Joseph (New York: Routledge, 2006). For a recent analysis of the challenges of urban school reform, see Charles Payne, *So Much Reform, So Little Change: The Persistence of Failure in Urban Schools* (Cambridge: Harvard Education Press, 2008).

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