

Money and Choice in Kansas City

Major Investments With Modest Returns

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In December of 1992, thirty newly elected Missouri state legislators toured Central High School, the showpiece of the Kansas City, Missouri, School District (KCMSD). As part of a court-ordered desegregation plan, the school district had converted most of its schools into magnets with special curricular themes and state-of-the-art facilities. The most expensive and well-publicized of the magnets, the \$32 million Central High School, had been designated as a "Classical Greek and Computers" magnet and had been completed only months before the state legislators' visit.

"The first thing they showed us was the swimming pool," recalled Greg Canuteson, a representative from Liberty, an affluent suburb north of Kansas City.¹ "And of course [the school principal] described it as a 'natatorium.'" As the tour proceeded through the gymnasium and the weight training room, Canuteson recalled, the principal described the school's special dietary regimen tailored to athletes. Full-time staff, the principal explained, included a weight trainer, a diving instructor, a Russian fencing instructor, and a gymnastics coach.

Rounding out the tour, the legislators were ushered through a special room reserved for gymnastics, a fully equipped robotics laboratory, an indoor track, and a special wrestling facility.

The Kansas City school desegregation plan represents an extreme case of one popular type of desegregation remedy. During the decades of debate about desegregation strategies, many critics of mandatory plans have often said it would be more effective simply to give extra money to segregated minority districts. In this way, urban schools could be made good enough to lure whites back to the city and hold onto middle-class minorities. After the federal district court rejected the efforts of civil rights lawyers to establish a desegregation plan that would have integrated students from the predominantly

white suburbs with students from the predominantly minority city, the court instead ordered an all-out effort to produce desegregation through choice and magnet schools.

Kansas City was given what most educators can only dream of: vast economic resources with which to take on the challenge of improving achievement and creating racial integration by attracting city and suburban whites to city schools through choice. Through the intervention of the federal district court in *Jenkins v. Missouri*, more than \$1.5 billion was funnelled into the KCMSD between 1987 and 1995. The judge in the case could be called cautious in his rejection of a mandatory metropolitan plan that would have produced areawide integration. But, he has been criticized as a radical for the range and cost of the education and choice remedy. To fund the costly educational improvements, Judge Russell G. Clark assessed new taxes on district residents, triggering cries of taxation without representation. But the state of Missouri was forced to fund the lion's share of the remedy, sparking intense resistance among voters statewide; there was great resentment of such a disproportionate allocation of scarce state dollars to an urban, mostly minority school district. Nevertheless, when the Supreme Court reviewed the case in April of 1990, it essentially upheld the power of the judiciary to fund the remedy through a property tax increase, even without the consent of the district's voters.²

The judge in the case had viewed the extraordinary expenditures as necessary to create an attractive menu of "distinctively different" magnet schools. Each magnet, the theory went, would contain a set of unique, world-class educational facilities to lure white parents from within and beyond the school district boundaries. Unlike the remedy in neighboring St. Louis, the Kansas City plan had no mandatory components: transfers between the KCMSD and adjacent suburbs were encouraged but never enforced.³ Suburbs, in other words, were not required to participate in any way, though suburban students could attend city schools.

In 1995, a more conservative Supreme Court ruled in a 5-4 decision that the district's goal of trying to attract whites to the city schools was not valid and, instead, that the lower courts should instead focus on the goal of freeing the district from court control and returning schools to the control of local leaders. While striking down this legal underpinning for Kansas City's reforms, the Court also reversed a ruling that cited still low test scores as justification for

ordering the state of Missouri to continue paying for "quality of education" programs intended to upgrade the urban schools. In addition, the Court said Judge Clark did not have authority to grant raises to district employees.

The Court returned the case to the district court for more hearings, after which lower courts will need to decide the fate of the suburban transfer program, whether to reduce employee raises to earlier levels, and whether to release the state from its obligation to pay for improvements to city schools.

This chapter does not focus primarily upon the uncertain effects of the 1995 Supreme Court decision. It evaluates the plan and its promises several years after the ambitious program was implemented.

Touted as the solution to both poor achievement and racial segregation, the plan achieved only modest advances in both categories. As tools for desegregation, voluntary magnets alone do not appear to be powerful enough to reverse or even halt white flight. As vehicles for educational improvement, even the most ambitious and comprehensive magnet remedies may accomplish little without vigilant monitoring, skilled administration, and serious oversight.

Despite the apparent limitations of this program, the most devastating, though not unlikely, outcome would be for the district court to abandon, rather than redirect, the remedy at this stage. That choice would leave the city school district with a vast set of court-ordered programs it could not afford to operate.

It is important to remember that this is not the remedy that plaintiffs asked for. The plaintiffs had originally asked that segregated minority students in the city be given access to the already effective white schools in the suburbs. The story of Kansas City should make us reexamine court decisions against remedies that create opportunities for metropolitan-wide desegregation. But whether that remains a realistic strategy is questionable in light of the Court's 1995 ruling in *Jenkins*.

Civil rights lawyers may need to redirect their focus on interdistrict housing discrimination that created school segregation. In crafting legal arguments and remedies, attorneys will need not only to secure funding sources in advance. Plaintiffs who seek educational results or compensation must point to specific ways in which schoolchildren isolated in segregated, predominantly poor schools have been adversely affected by the conditions to meet the new Supreme Court requirements.

The Historical Setting

The state of Missouri is a border state between the North and South. As was typical in the South, the state constitution historically required separate schools for whites and blacks.⁴ Six weeks after the *Brown* decision was handed down, the Missouri attorney general left each school district to decide “whether [it] must integrate.”⁵ For decades after racial integration became the law of the land, the state ceded all responsibility for enforcement to city and county governments.⁶ Missouri did not participate in the Southern campaign of massive resistance to integration. But the state did nothing to achieve integration or break down its segregated system. By 1980, the state of Missouri had twice been found guilty by the federal courts of having helped perpetuate segregation.⁷

In the absence of state enforcement, Kansas City officials, like their counterparts across the state, employed a variety of measures to perpetuate the segregated educational system. Attendance boundaries were redrawn to minimize interracial contact.

Between 1950 and 1970, 67,000 white people left the Kansas City Missouri School District and were replaced by black incomers totaling 64,000.⁸ These people were moving not only to smaller, mostly white districts within city boundaries, but also across the Missouri-Kansas state line.

The turning point came in 1969, fifteen years after *Brown*. This was the last year in which a majority of the school district’s enrolled students were white (although a majority of the school district’s *residents* remain white to this day), and also the last year in which city voters approved an educational bond measure. Despite the four times since 1986 that the district has registered a slight annual increase in white enrollment, the percentage of African American students in the district has climbed dramatically to its 1994 level of 75 percent.⁹ District voters rejected educational levies nineteen times. In June of 1977, the Missouri Department of Elementary and Secondary Education lowered the KCMUSD’s state classification from AAA to AA status, a rating reflecting the declining quality of educational facilities and resources.¹⁰

By 1985, only a few elementary schools of the fifty in the KCMUSD were performing at or above the national norms in reading and mathematics.¹¹ According to district court findings, “substandard conditions” such as “health and safety hazards, educational environment

hazards, functional impairments, and appearance impairments” were rampant. “The conditions at Paseo High School,” the court noted, “[were] such that even the principal stated that he would not send his own child to that facility.”¹²

In 1976, the KCMUSD—then 65 percent African American—came under the scrutiny of the Office of Civil Rights of the U.S. Department of Health, Education and Welfare (HEW). The agency was responsible for enforcing the 1964 Civil Rights Act that forbade federal funding to school districts operating segregated schools. In a highly publicized federal hearing, HEW threatened to cut off federal aid unless the district could prove that it was not legally responsible for segregation. In response to HEW’s threat, Kansas City’s Board of Education established a Community Task Force on School Desegregation to develop a plan to comply.¹³ In the end, the task force chose to adopt so-called Plan 6c under which a 50-50 racial balance in most schools would be achieved through the maintenance of several all-black schools.¹⁴ In the ensuing six months, the KCMUSD and HEW waged an all-out legal and public relations battle over the validity of Plan 6c. Meanwhile, HEW continued threatening to withhold federal funds.

Although Plan 6c took effect in September 1977, a process with much more far-reaching historical consequences was taking place behind the scenes. The board-appointed task force concluded that in a district that was already 65 percent black, merely redistributing the existing student pool would fail to achieve significant interracial exposure. Several experts on the panel endorsed a “metropolitan” plan, which would have included two-way student transfers between the inner city and the mostly white surrounding suburbs. Only a mandatory busing plan of this type, the experts argued, would achieve an appreciable racial balance and halt the spiral of urban decline. Yet since a metropolitan plan would incorporate students from beyond the KCMUSD’s jurisdiction, the school board could not order such a broad plan on its own initiative. To do so would require the court’s intervention.

Two days before submitting Plan 6c to placate HEW and maintain federal funding, the school board filed suit in federal court against eighteen school districts in Kansas and Missouri, the federal government, and the states of Missouri and Kansas, asking for a metropolitan desegregation remedy.¹⁵ The case was turned over to Judge

Russell Clark. A Democrat from rural Missouri, Judge Clark was assigned the Kansas City desegregation case just three months after he was appointed to the federal bench in July 1977.¹⁶ Preliminary hearings lasted a full year, from 1977 to 1978.

One of Clark's first actions was to force the Kansas City school district to switch sides. Though it had been positioned by its board as a plaintiff in filing the initial suit, Clark named the district as a defendant, anticipating that the KCMSD would be found liable for constitutional violations. At the request of several school board members, a local, private civil rights lawyer, Arthur Benson, agreed to represent the plaintiff schoolchildren. The NAACP Legal Defense Fund, a leading civil rights litigation group, later contributed substantial legal and financial support.

Although it was now positioned as a defendant in the case, the school district worked together with the plaintiffs over the next decade to sustain the case throughout the arduous process of trial and appeals. Thus, the early participation of the school district resulted in a curious alliance—plaintiffs and defendants working together as “friendly adversaries” toward a common goal of integration.

This special partnership between the plaintiffs and the school district is less surprising when one considers that both parties shared a strong interest in infusing badly needed funds into the dilapidated district. There is no question that both parties sought to rejuvenate the district through the implementation of a desegregation remedy.

Many people today see the plan as a way to get money from the state of Missouri, but that view is incorrect because the original plan sought a metropolitan—not a monetary—remedy. If the original goal was simply to obtain as much money from the state as possible, a metropolitan remedy would not have been the most promising strategy. A comprehensive magnet remedy would have been a far more lucrative desegregation method. The fact that the district and plaintiffs originally proposed a metropolitan plan, rather than a comprehensive magnet remedy, strongly undermines this “cynical realist” view of their partnership.

In filing a metropolitan suit in federal district court, the KCMSD plaintiffs carefully crafted their argument to meet the Supreme Court's demanding requirements for city-suburban desegregation.¹⁷ The case developed by the plaintiffs and KCMSD attempted to demonstrate that the suburbs were not only “substantially affected by,” but

also helped cause the constitutional violations of the state of Missouri. Using an array of demographic and historical data, the plaintiffs argued that the state and local governments worked in concert with federal housing agencies to steer African Americans away from the suburbs and into the mostly black inner city, with the tacit and sometimes overt cooperation of suburban authorities.

Elsewhere, some courts have accepted similar proof as sufficient to fulfill the plaintiff's burden of proof with respect to *Milliken I*.¹⁸ But Judge Clark relied on a narrower interpretation of *Milliken*. He dismissed the plaintiffs' argument on the grounds that he did not believe they had found a “smoking gun” that proved that the suburbs had directly caused segregation. When appealed to the Eighth Circuit, Judge Clark's decision was upheld by a one-vote margin. In his dissenting opinion, Chief Judge Lay argued that Judge Clark's decision had been premised on a “misunderstanding of *Milliken v. Bradley*” and that “the district court thus erected an improper proof burden for the plaintiffs to overcome.”¹⁹

Judge Clark himself conceded that he had considerable latitude on the question of suburban liability. He speculated that had he decided to hold the suburbs liable, the Eighth Circuit “probably would have affirmed me.”²⁰ In the absence of what he viewed as a direct violation, then, it was the judge's own discomfort with applying coercive measures—in this case interdistrict mandatory reassignments—that led to his decision. Although still defending the legal basis for his ruling, Judge Clark admitted that the initial ruling made the task of desegregation far more difficult and costly:

Based upon hindsight it would have been much much much easier to integrate the Kansas City schools if I had kept them [the suburban districts] in... So it would not have been necessary to come up with a lot of these plans, and with a lot of the capital improvements... I could have ordered some of the Kansas City school children transferred to the suburban districts, and vice versa... the very minute I let those suburban school districts out, I created a very severe problem for the court and for myself, really, in trying to come up with a remedial plan to integrate the Kansas City Missouri School District.²¹

The real problem in Kansas City, one typical of most American cities, stemmed from decades of white flight, which left the school district predominantly black. This meant, of course, that no amount of student reassignment within the district could produce full desegregation and that the black percentage continuously grew.

After the failed attempt to win a metropolitan plan, the plaintiffs reconsidered their options and decided to propose a comprehensive voluntary magnet plan. The magnet plan was chosen, explained Benson (the plaintiffs' attorney) as the only viable way to attract white students back into the system:

We had lost the truly widescoped mandatory plan that we were seeking ... so then we looked at our options: well, how do we achieve desegregation in a district that is 75 percent minority? Well, the only way to do that is if we can get the suburban white kids back involved in our plan. ... So if we are going to do that voluntarily, what will it take to get white kids from the suburbs to come to our schools, remembering that our schools are decrepit, they're underfunded, the class sizes are huge, the class books are outdated? We concluded that what we needed to do was restructure the educational system and improve it. ... [but] we still wouldn't be able to get them to come from the suburbs unless it was different from the suburbs. ... so we realized we had to make them not only nearly as good as the suburban districts, we also had to make them special ... distinctively different. And so that sort of led us to magnet schools.²²

With the judge's approval, the plaintiffs and school district lawyers began to research the use of magnet schools as a desegregative tool elsewhere in the country. The educational inequity of magnet plans that had been established elsewhere soon became a matter of grave concern. Benson found that magnet plans typically created a "two-tiered system" in which resources and educational gains would be concentrated in magnet schools, while inferior quality and growing minority isolation characterized the remaining traditional schools. The only way to surmount this problem, the plaintiffs and school district experts concluded, was to "magnetize" all schools in the district and thereby avoid the potential inequity.

Throughout the following year, the school district and the plaintiffs' counsel began working on a comprehensive magnet school plan that would convert every senior high school, every middle school, and about one-half of elementary schools in the KCMSD into magnet-theme schools by the fall of 1991. The idea was that world-class facilities and unique educational offerings would impart a high-profile visibility to the magnet schools. This prominence, in turn, would enhance the district's "marketability" to white parents and help attract white transfers.

Legal precedent would have allowed Judge Clark to order a smaller plan. As he acknowledged in his 1986 court order, "[plans which]

magnetiz[e] only a limited number of schools in a district... have been approved by the Eighth Circuit Court of Appeals and the United States Supreme Court."²³ Clark chose to implement the proposal of the plaintiffs and the KCMSD, which was unmatched in scope and magnitude. Judge Clark indicated that his decision was based on the desire to avoid the inequity of a two-tiered educational system and to ensure that there were "enough magnets to pretty much entitle every student that wanted to go to a magnet, the right to attend a magnet."²⁴ As stated in the 1986 court order, the magnet themes "would provide a greater educational opportunity to *all* KCMSD students."²⁵ Judge Clark's firm commitment to educational improvement for all district students, then, compelled him to implement a daring magnet plan far more comprehensive than plans that existed elsewhere.

Ironically, the attorney general's litigation strategy helped cement the plaintiffs' case. Even though the Eighth Circuit had already held the state of Missouri liable for segregation and discrimination in two other federal cases, the attorney general refused to concede the state's liability. According to Benson, the state's total refusal even to admit any wrongdoing, especially given the overwhelming evidence that the state perpetuated, even enforced, separate and inferior schools for black children, began to alienate the judge after the outset of the trial.²⁶ Judge Clark himself corroborated this view by characterizing the state's policy of "total opposition" as counterproductive and politically motivated.²⁷

The state's next crucial decision, cited as a tactical error by all of those interviewed except the assistant attorney general, was its failure to offer a scaled-down alternative to the comprehensive magnet proposal. The state's legal representatives may have been constrained by their superiors in the state executive branch, who may have been tempted to pursue politically popular strategies even if they had the potential to drain the state treasury. Even after Judge Clark approved immediate implementation of the magnet school concept, the state continued to protest the judge's decision, instead of offering a smaller-scale, more cost-effective magnet alternative. Committed to a comprehensive plan and lacking a credible alternative, then, Judge Clark accepted the school district's plan to magnetize all high schools, all middle schools, and half of elementary schools in the district.

In 1986, once Judge Clark had accepted the full-scale magnet plan, the focus of the litigation shifted. The question was now how to

finance the plan. Judge Clark specified that the state would pay between three-fifths and two-fifths to three-fourths and one-fourth, respectively, depending on the type of improvements being ordered. To ensure that the funding would be guaranteed, he made the state and the school district "joint and severally liable" so that if one party was unable to pay its share of the costs, the other party would have to make up the difference.

The problem with this financing structure was readily apparent. The school district, with its current budget, could not pay its two-fifths share. The district had failed to pass a school levy since 1969. The state enacted a variety of additional tax measures, which further impeded the district's ability to maximize its local tax revenue.²⁸ Unless some new source of local funding were found, the state would end up as the "deep pocket," financing not only its own specified contribution, but also the district's court-ordered share.

Meanwhile, however, the costly magnet plan was taking shape. On his order of 15 September 1987, Judge Clark approved the expenditure of \$265 million for "the renovation and construction of approximately 72 schools and six other facilities through the fall of 1996."²⁹ The plan required the closure of eighteen school facilities and the construction of seventeen new ones.³⁰ Needless to say, these provisions were costly indeed—the quarter-billion-dollar figure reflected only the building construction and renovation. Additional costs for magnet instruction and programming were to be calculated separately.

In the text of the 1986 order, Judge Clark urged the KCMSD to seek new funding sources, so that the full financial burden of the remedy would not be shifted to the state of Missouri. In 1986 and 1987, the district followed Clark's order and introduced three ballot measures that would have raised taxes to pay the district's share. All three referenda were rejected by district voters.

In April of 1987, Annette Morgan, a state representative from the only affluent corridor of central Kansas City, introduced a bill in the state legislature that would enable Kansas City to finance its share of the costs through three new taxes—a sales tax, an income surcharge, and an earnings tax. "I was laughed off the floor," Morgan recalled.³¹ By 1987, then, the plaintiffs and the school district had exhausted every traditional means of generating new local taxes.

In a historic ruling, Judge Clark noted the failure of these conventional methods and unilaterally imposed two tax measures to finance

the school district's share of the costs. Property taxes within the school district nearly doubled. A new tax—a 1.5 percent surcharge on Missouri State Income Tax—was instituted for anyone, including nonresidents, who worked or did business within the KCMSD.³²

Once again, the attorney general's legal strategy failed to prevent the court from making substantial claims on the state treasury. Combined, the property tax and the far more lucrative income tax surcharge generated all of the district's share of costs for the 1987-88 year.³³ If these new taxes were thrown out on appeal, the state would be forced to make up the difference. A "successful" appeal by the state, in other words, would drain more dollars from the state treasury. Nevertheless, the attorney general appealed all of Judge Clark's new taxing measures. On 19 August 1988, the Eighth Circuit Court of Appeals upheld all of the substantive components of the remedy and also the property tax, but rejected the lucrative income tax surcharge.³⁴ The local property tax thus became the sole source of generating local funds. In 1990, the Supreme Court affirmed the circuit court's ruling.³⁵

In April 1993, Judge Clark rejected proposals for making changes in magnet schools, ruling that the measures were too costly. In October 1994, the Supreme Court agreed to consider the state of Missouri's two-pronged argument that improved test scores should not be a prerequisite for Clark to end oversight of the school district and that Clark overstepped his boundaries by ordering salary increases for nonteaching employees of the KCMSD.

In February 1995, the district and the state began negotiations in an effort to end the desegregation case. The negotiations were continuing in June 1995, when the Supreme Court struck what may prove a devastating blow to the desegregation plan, by attacking its central goal of attracting white students from suburban school districts.

The Costs

Costs continued to mount as construction proceeded. As of 31 March 1993, the total cumulative cost of the desegregation plan was approximately \$1.15 billion. Of this amount, the State's court-ordered share was approximately \$586 million, and the district's share was approximately \$564 million. To fund an increase in salaries, the rate was increased 24 percent in July 1990.³⁶ As anticipated, the local property

tax levy did not generate the district's full share of the costs; therefore, the state paid an additional \$105 million. Thus of the \$1.15 billion total, the state paid about \$691 million.³⁷

The state uses two measures to calculate per-pupil costs, "current" and "total" expenditures. "Current expenditures" includes instruction and support services, but excludes some types of costs such as capital improvements and capital outlay.³⁸ "Total expenditures," is an aggregate figure including all spending by the district.³⁹

According to both measures, per-pupil costs in the KCMSD expanded dramatically between 1985 (just prior to the court order) and 1992. Current expenditures per eligible pupil increased by more than two-and-a-half times from \$2990 to \$7819. Meanwhile, the statewide average grew by only about 50 percent (from \$2470 to \$3683), and the eleven-district average increased by only 54 percent (from \$2573 to \$3972). When the *total* expenditures per enrolled pupil data are analyzed, similar trends emerge. Kansas City's total spending per enrolled pupil more than tripled during this period (from \$3464 to \$11,513), while the state average rose by only 56 percent (from \$3030 to \$4723) and the eleven-district average increased by 65 percent (from \$3173 to \$5223).⁴⁰

When KCMSD per-pupil costs are compared directly to the statewide average, the disparity is also striking. In 1985, prior to the desegregation plan, KCMSD per-pupil expenditures were 10 to 21 percent higher than the statewide average, depending on which measure was used.⁴¹

This dramatic trend of increasing expenditures was broken in 1993, when total per-pupil expenditures in the KCMSD fell sharply, from \$11,513 to \$8917. The decline might have been caused by the fact that rebuilding had been completed at the time. Current expenditures declined to a much smaller degree, from \$7819 to \$7158. Given this recent decline in KCMSD spending, the disparity between KCMSD and statewide spending has also narrowed. For fiscal year 1993, total expenditures per enrolled pupil were 79 percent higher in the KCMSD; current expenditures were about 90 percent higher.

By 1988, KCMSD costs began to resemble per-pupil spending in St. Louis and two of St. Louis's wealthy white suburbs, Ladue and Clayton. Since 1985, spending in these three districts had been the highest in the state of Missouri. By 1989, Kansas City surpassed St. Louis's expenditure level and has continued to do so through 1993.

Meanwhile, taken as a whole, KCMSD expenditures since 1989 have been roughly similar to expenditures in Ladue and Clayton.

It would be informative to analyze whether KCMSD per-pupil spending for its magnet schools has been similar to national trends. Unfortunately, this type of comparison is not possible for two reasons. First, the district does not calculate per-pupil costs separately for magnets and nonmagnets. Second, reliable national data that would facilitate such a comparison were not found.

One of the first and only studies assessing magnet school costs on a national scale was published by social scientist Kent Chabotar in 1989, using data from 1981.⁴² Using a stratified random sample of school districts across the country, Chabotar compared spending in 106 magnets and 588 nonmagnets for 1980-81 and 1981-82. Chabotar found that although magnet secondary schools cost more per student than nonmagnets, magnet elementary and intermediate schools actually cost *less* than their nonmagnet counterparts. Much of the difference, he found, could be explained by "educational economies of scale": magnets' higher fixed cost, when combined with relatively low enrollment at the secondary level, led to higher per-pupil costs; but relatively high enrollment in elementary and intermediate magnets outweighed disparities in fixed costs and thus led to lower per-pupil expenditures. At the high school level, where enrollment did *not* increase, average magnet expenditures in Chabotar's study exceeded average nonmagnet expenditures by no more than 23.9 percent for both years.⁴³

Although Chabotar's study is severely limited in scope and applicability, it does seem to suggest that elsewhere in the country, magnet schools are not necessarily very costly when compared to nonmagnet schools. Relying on the limited data currently available, spending in the KCMSD is very high compared to state and local averages; since 1989 it has ranked among the top two or three districts in the state in terms of per-pupil spending. Judged comparatively in historical, local, and statewide contexts, then, per-pupil costs in the KCMSD were moderately high from 1987 to 1988 and have been very high since 1988 to 1989.

Where is the money going? Data from the start of the plan through early 1993 and program expenditures give a very rough, if somewhat deceptive, approximation of the distribution of desegregation funds.⁴⁴ Costs related to improving instruction and programming account for about 44 percent of the total desegregation budget.⁴⁵ Teacher salary increases account for another 8 percent.⁴⁶

About 36 percent of the total went to the acquisition, construction, renovation, and maintenance of school facilities.⁴⁷ Transportation expenditures totaled about 8.5 percent. The remainder could be attributed to various costs such as interest and debt service.⁴⁸

Some local critics believe the plan has overemphasized capital expenditures and costly magnet programming, and paid too little attention to attracting a high-quality teacher pool.⁴⁹ To evaluate the strength of this claim, we must examine the court's allocation of funds in more detail. According to the legal counsel for the teachers' union, *Jenkins v. Missouri* was the first desegregation remedy in the country to include salary increases for all district teachers on the assumption that improved quality required better teacher pay.⁵⁰

The court approved a teacher salary package in the original 1987 order. In 1990, the parties reached a settlement that continued salary increases through the end of fiscal year 1992. When the settlement expired, however, the issue of whether and how much to raise teachers' salaries was hotly contested by the state, KCMUSD, and the teachers' union. The state charged that the 1990 increase had "virtually no effect on increasing the quality of new hires or decreasing the quality of staff who left the District" and therefore that salaries should be rolled back to 1986-87 levels. The American Federation of Teachers argued that salaries commensurate with the projected average of urban districts nationwide were crucial to retaining and attracting high-quality teachers. The KCMUSD, citing the district's "dire fiscal constraints," staked out the middle ground and endorsed a "roughly competitive" compensation plan that was below the national urban average, yet substantially above 1986-87 levels.⁵¹

Comparative data reveals that salaries in the KCMUSD have been competitive with, but not uniformly higher than, salaries offered by nine suburban districts in the greater Kansas City area.⁵² In 1995, the Supreme Court struck down the court order requiring payment of salary increases, ruling that lower relative salaries in the urban district could not be traced to intentional segregation.

Monitoring and Oversight

The justification for emphasizing magnet facilities and programs, according to Judge Clark's 1987 order, was to improve minority opportunity and desegregate the district:

[The court] is convinced that the students who are presently enrolled in the KCMUSD are entitled to a vindication of past denial of constitutional rights now... First, the carefully chosen magnet themes would provide a greater educational opportunity to *all* KCMUSD students... The Court also finds... that the proposed magnet plan is so attractive that it would draw non-minority students from the private schools who have abandoned or avoided the KCMUSD, and draw in additional non-minority students from the suburbs.⁵³

Beyond this general statement of purpose, however, the court did not specify any exacting criteria for "success" or "failure." The remedy included a complex array of facilities and educational programs tailored to the special theme of each magnet school. Yet Judge Clark indicated no plan standards of improvement for academic achievement test scores, attendance, or dropout rates, nor did he specify any numerical targets for desegregation. However, in 1993, the appeals court affirmed a district court decision ruling that KCMUSD had failed to achieve partial unitary status citing test scores were still below national norms. (The Supreme Court reversed that decision in 1995, however.)

In 1985, the court appointed a ten-member Desegregation Monitoring Committee (DMC) to serve as the "arm of the court." The DMC included four subcommittees, each addressing a separate facet of the plan: desegregation, budgeting, education, and voluntary inter-district transfers.⁵⁴ The district provided the DMC with monthly and bimonthly reports, copies of all court filings, board actions and agendas, task force minutes, and additional items requested by individual subcommittees. Committee members are paid by the court to consult with district officials and evaluate the district's performance and have also been empowered by the court to hire additional auditors and consultants. With respect to both educational improvement and desegregation, however, the DMC has primarily relied on the data generated by the district. DMC chairperson Dr. Eugene Eubanks said, "I do not believe that the DMC in a meaningful way engages in what I call primary source gathering... We visit schools, we make observations, we generate reports, but we do not administer surveys... We use the district's data in order to gauge their progress in the context of desegregation, and academic improvement as measured by standardized test scores."⁵⁵

In 1993-94, the DMC began to conduct some independent evaluations through three independent on-site evaluators, as well as a consulting firm, to evaluate issues such as potential inequities between

magnet and nonmagnet schools. However, Eubanks claims that “the DMC has not been aggressive in pursuing alternative measures of educational performance, in addition to standardized tests,” or in influencing the particular types of tests that are used by the district.⁵⁶

The state department of education did not play an important role in either the formulation or oversight of the remedy. According to Diane Vaughan, former director of desegregation services for the Missouri Department of Elementary and Secondary Education (DESE), in the late 1980s, the governor and attorney general discouraged DESE from taking an active role in monitoring the plan and chose to appeal even those components of the remedy that DESE favored.⁵⁷ Committed to a policy of blanket opposition, therefore, the state executive branch not only failed to monitor the district’s execution of the remedy, but also barred the state educational leaders from doing so.⁵⁸

The Results

In evaluating just how successful the district has been in achieving its dual goals of educational improvement and desegregation, we must remember that it is in every school district’s interest to present statistics that showcase its record in a favorable light. It is possible that the testing measures chosen by the district, as well as the types of evaluations used on them, have been influenced by the district’s vested interest in demonstrating successful outcomes. Even Dr. Charles Allen, former coordinator of testing for the KCMSD, conceded that “in high-stakes testing environments [school district officials] are attempting to show improvement.”⁵⁹ Nevertheless, in the absence of independent studies of district performance, we must confine our analysis to the data provided by the KCMSD, since these are the only data available.

The district uses two types of standardized tests that allow comparisons over time, and to other student populations: the Iowa Tests of Basic Skills (ITBS) in kindergarten through grade eight and the Tests of Achievement and Proficiency (TAP) in grades nine through twelve, a national, norm-referenced pair of testing instruments; and the Missouri Mastery and Achievement Tests, statewide criterion-referenced tests. The nationally normed ITBS/TAP tests, the centerpiece of the district’s testing battery, enable the district to compare ITBS and TAP scores over a variety of groups, years, and cohorts. Some of these ITBS/TAP comparisons are encouraging. There is some

modest but promising evidence that, at least at the elementary level, magnet schools may be doing a comparatively better job of educational instruction than their nonmagnet counterparts. For example, using “grade equivalents,” the district tracked the performance over time of four sets or “cohorts” of students at magnet and nonmagnet schools; magnet students (both minority and white) consistently outperformed their nonmagnet counterparts in most academic subjects and years. Even adjusting for three variables that could bias the results (minority status, poverty status, and test score in the initial year of the study), the performance gap that remained in 1992 was statistically significant in eight out of twelve cases, although small in magnitude.⁶⁰

Another cohort study tracking magnet school achievement at the elementary level—this time focusing on a particular group of magnets, the eight “foreign language immersion” schools—also showed a promising trend. The 1988 kindergarten cohort, the first group of students enrolled full-time in foreign-language elementary schools for their entire elementary grades, fluctuated in the earliest grades but by the fifth grade scored well above district averages *and* national norms, with particularly high scores in math.⁶¹ It remains to be seen whether the 1989 and 1990 kindergarten cohorts will duplicate these promising results. Although there is always the possibility of selection bias in magnet school achievement studies, these two cohort studies offer moderate support for the claims that the elementary level, magnet schools in the KCMSD are offering higher quality instruction than non-magnets and that foreign-language magnet instruction may be achieving exemplary outcomes by both districtwide and national standards.

Analyses of test data that compare grade-level performance over time, rather than following groups of students, raise some formidable methodological problems. Achievement score gains in 1986 and 1992 for grades one through eleven, for example, are difficult to interpret. The KCMSD appears to have made consistent achievement gains in reading and language. Yet this is only part of the story. The apparent gains are based upon national norms from 1985.⁶² Since 1985, national norms have risen in all three categories for nearly all grade levels. The available data does not show whether the district has kept pace with or exceeded rising gains in national achievement.⁶³

In a separate study, the district has compared 1993 KCMSD percentile ranks on the ITBS/TAP to the nation as a whole, to large city schools, and to high-poverty school districts (low SES). District officials claim

that the fairest comparisons would be with the high-poverty group, given Kansas City's urban, high-poverty status. (A higher proportion of KCMSD students receive free/reduced-price lunches than in the large city reference group.) When compared to low SES norms, KCMSD scores in 1993 were much higher than the norm for grades K through five, considerably above the norms for grades six through eight, and roughly similar to norms for grades ten through twelve. In contrast, when compared to the large city reference group, KCMSD averages are only consistently above the norm for grades K through six.

These comparisons are somewhat questionable, however, on two grounds. First of all, it is uncertain to what degree the KCMSD is truly comparable to the low SES reference group. (Riverside, the test publisher that also calculates the norms for the low SES reference groups, uses different criteria for judging socioeconomic status that exclude rates of participation in free/reduced-price lunch programs.) Second, as was the case in the earlier comparison data, the norms used for this comparison (1985) are already eight years out of date, and thus the results of comparing KCMSD's 1993 achievement to national reference groups from 1985 contain an important element of bias.

A growing literature has corroborated earlier findings that various flaws in testing design, particularly the use of outdated norms, call into question the assessment of upward achievement trends in nationally normed tests.⁶⁴ Allen, the former coordinator of testing for the KCMSD, conceded that norm-referenced tests in large school districts like the KCMSD must be evaluated with caution. Allen noted that "the nation has been doing better on norm-referenced tests generally [since the late 1970s], and when the norms have been redone nationally, they tend to be a little more difficult with each successive [updating]." Moreover, he suggested that there tends to be "alignment of the curriculum to the test over time, and I would say generally that there's an increase [in test scores] because it is easier to teach to the test." Allen acknowledged that at least part of the KCMSD's rising test score trend from 1986 to 1992 may have been due to teachers' growing familiarity with the tests.⁶⁵ Thus, the dimensions of educational improvement remain unclear.

Another set of standardized tests, the criterion-referenced Missouri Mastery and Achievement Tests (MMAT), are administered statewide. Annual test score comparisons can be made at each of four

grade levels. For each of the past four years (spring 1990 through spring 1993), district scores have remained from 10 to 20 percent below state averages for all sixteen comparison points. The gap between district and state averages did not significantly diminish.⁶⁶

Educational quality can also be assessed by attendance rates and graduation trends. In Kansas City, these data are either inconclusive or appear to be negative. In elementary schools, average attendance hovered around 93 percent until 1990, but then declined slightly. In middle schools, daily attendance has remained approximately constant.⁶⁷ In high schools, attendance fell dramatically from the 1989-90 school year (from 80.9 to 71.6), rebounded to 76.7 in 1991-92, and remained relatively stable the following year.

Graduation rates were also inconclusive. Sixty-two percent graduated in 1984-85, but the rate declined sharply to the 50 percent range where it has since remained. The 1992-93 school year registered a modest upswing (from 43.6 percent to 50.1 percent), but it is unclear whether this short-term rise will turn out to signal a new long-term trend of rising graduation rates.⁶⁸

The primary court-specified goal of the remedy is desegregation. The court specified two methods of increasing desegregation within the district: redistributing the existing student pool so as to maximize interracial exposure in individual schools, and augmenting the proportion of white students in the district as a whole.⁶⁹ According to the exposure index, if the district was perfectly balanced, every school in the district would have an interracial exposure index of 25 percent, reflecting the fact that 25 percent of the students in the school were white. The district showed real progress for nonmagnet elementaries.

These data suggest that the remedy has successfully redistributed the existing student population in an advantageous way, slightly increasing the interracial exposure of most KCMSD students (with the notable exception of students at nonmagnet elementary schools) and evening out the racial proportions in individual schools.

When one evaluates the second type of desegregation specified by the court, "to regain some portion of the white students who fled the district and retain those who are still there," the results are much less encouraging.⁷⁰ Minority racial isolation has increased since the implementation of the remedy. The district was 73.5 percent minority in the 1986-87 school year, but by 1992-93 had become 74.8 percent minority. The district has argued that the decrease in white enrollment

is much smaller than it would have been if the magnet plan had not been implemented. Dr. Mary Esselman, Coordinator of Research for the KCMSD, has estimated what the racial makeup of the district from 1986-87 to 1992-93 would have been in the absence of the desegregation plan.

According to the district, the decline would have been much faster and more dramatic if the magnet plan were not in place. But the methodology used here is somewhat problematic because the projections are not based upon a close examination of changes in minority enrollment in the years immediately before the magnet plan. The most that can be said at present is that the magnet plan may have helped decrease the rate at which white student enrollment declined.

The preceding analysis shows actual and projected enrollment trends, but it does not show how many white transfer students have actually entered the district since the plan has been in place. At the beginning of the program, the number of whites coming in was very small; after the numbers climbed sharply from 1988, they began to level off.

Since the 1991-92 school year, the district has kept track of the student rate of those who remain in the system year after year. The data show that from 1991-92 to 1992-93, about 66 percent of students across all grade levels stayed at least one year after their year of transfer. Private school transfers were much more likely to stay than suburban transfers (76.2 percent compared to 63.3 percent, respectively). Retention rates from 1992-93 to 1993-94 were very similar, with an overall suburban/private retention rate of 65 percent. About 76 percent of nontransfer white students previously enrolled in the system stayed in the district.⁷²

What can we conclude about the effectiveness of the Kansas City plan in achieving its twin court-mandated goals of educational improvement and desegregation? Educational achievement data are promising in some respects but the gains are modest. Although there has been an absolute increase in performance for grades K through eleven, it is unclear how students would compare to current national norms. The strongest evidence for dramatic improvement seems to be confined to magnet schools at the elementary level. Statewide criterion-referenced tests provide no evidence that the district's performance is improving, at any level, compared to the state as a whole. Attendance and graduation rates do not reveal any decisive positive

trends since the implementation of the remedy.

With respect to desegregation, the evidence is mixed. The plan has made considerable progress in achieving at least one of its court-specified goals, redistribution of the existing student body; measures of interracial exposure have improved. With respect to the second goal— attracting new white students into the district—it is hard to judge the remedy a success. The percentage of minority students in the district has continued to climb very slowly, perhaps at a slower rate than otherwise would have occurred. The district has argued in court that even if the best it has done is to slow the rate of white attrition, this is nonetheless a significant achievement compared to national trends. In many of the eleven districts surrounding the KCMSD, the rate of racial change from 1982 to 1991 has been more dramatic than in the KCMSD, with sharper climbs in minority enrollment.⁷³ It has also been argued that elsewhere in the country comparable school districts experienced larger increases in minority enrollment during the same period.⁷⁴

But for most local observers, it is not merely the educational and desegregative results of the remedy that have determined its success or failure; it is these benefits *weighed against the cost* of achieving them.

What Now for Kansas City and Beyond?

The Supreme Court's *Missouri v. Jenkins* decision in 1995 put the city's desegregation plan in jeopardy, though it is still unclear exactly how Judge Clark will respond to the ruling.

In its 5-4 decision, the Supreme Court said that because it was not shown that lower relative salaries in Kansas City were a direct result of intentional segregation, that the district court did exceed its authority in ordering the raises. It essentially struck down as inappropriate the underlying goal of the salary increase and monetary payment orders—to make the schools attractive enough so that suburban students would transfer there. Thus, even though the desegregation program is voluntary for suburban students, the Court ruled that mandating government expenditures for this goal is impermissible. Related to this, the Court ruled that it was inappropriate to require that test scores rise before unitary status is granted. Because the lower courts had failed to specify exactly how previous discrimination in Kansas City had lowered student achievement and exactly what would show that

the low achievement was remedied, the Court struck down the lower court ruling on this issue. The *Jenkins* decision urged that courts see the ultimate goal as the return of local control to school districts, not the creation of a successful desegregation plan. The Court ruling said the district court should recognize that Kansas City's plan has already achieved many of its goals and "bear in mind that its end purpose is not only to remedy the violation to the extent practicable."⁷⁵ but also to restore government control to state and local authorities.

There are many decisions about the case that, at this book's printing, have yet to be made. For example, the judge will need to decide whether to cut salary increases that had taken effect as far back as 1987. What to do with expensive buildings and existing programs will no doubt be a central question now that the Court's pointed language strongly suggests that court control over the district should end.

Even while the issues were pending, white enrollment fell 8 percent in September 1995, the largest yearly drop in a decade. School leaders blamed it on the threatened cuts in the plan.⁷⁶

The weaknesses in the Kansas City plan with the 1995 ruling in *Jenkins* need to be considered together when devising desegregation remedies in the future. In such remedies, the court must oversee and enforce a highly complex series of educational reforms. If the court feels that it must implement a remedy of this sort, it is crucial to consider the long-term implications of any remedy prior to implementation. In *Jenkins*, the district court installed new facilities on a scale so immense that the district would never be able to maintain them on its own. Yet because the district court had not critically examined the remedy from a long-term perspective, this problem did not become apparent until five years into the implementation phase. To be sure, guaranteeing that a comprehensive magnet plan will be financially self-sustaining after the court's withdrawal is a difficult task. Expensive facilities tend to be expensive to maintain. The typical inner-city tax base is barely adequate to support existing school facilities, let alone a state-of-the-art magnet school system.

The irony of the comprehensive voluntary magnet remedy is that although it has been used by the courts to fulfill *Brown's* desegregation mandate, it may in fact help perpetuate a stratified educational system. Magnets, when used alone, are simply not powerful enough to overcome the economic and demographic trends that have increased the racial isolation of the inner city.

Because of its minimal impact on desegregation, a purely voluntary, comprehensive magnet remedy (in a racially isolated urban setting) should be seen as an ambitious attempt at *educational* improvement. Defining the remedy in terms of educational inputs, however, is not enough. The court should specify what types of improvements are necessary and the specific standards the desegregation plan must meet before it can be dissolved. But certain programs should not be allowed to continue if they do not show educational progress.

Plaintiffs who still see metropolitanwide remedies as the most promising solution to segregation may find their only hope in proving that housing-related discrimination outside the city helped create racial isolation within the city. This is because *Jenkins* strikes down even voluntary efforts toward interdistrict desegregation if they use state monies.

Furthermore, the *Jenkins* decision suggests that plaintiffs and courts must trace educational deficits specifically to intentional segregation or prior discrimination. A central goal of civil rights lawyers, then, should be to prove that segregation and discrimination have been factors in lowering achievement levels, decreasing college-going rates, and affecting other educational achievement measures. Without such proof, courts under *Jenkins* have license not only to deny educational compensation remedies, but also to dissolve remedies before they have had any discernible effect upon the students they are supposed to benefit. If the courts suspend these remedies before they accomplish their goals, courts will only compound the difficulties and break the spirit of educators who are struggling to make the plans work.