DRESS REHEARSAL FOR *SHELLEY*: SCOVEL RICHARDSON AND THE CHALLENGE TO RACIAL RESTRICTIONS IN ST. LOUIS

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ABSTRACT

Throughout the twenty-first century, St. Louis was one of the most segregated metropolitan cities in the nation. This problematic setting allowed the city to become ground zero for the legal battle against racial segregation. While many are aware of the historic ruling in Shelley v. Kraemer*, which prohibited state enforcement of racially restrictive deed covenants, less is known about the distinct local history in St. Louis that set the stage for this case. This Essay discusses the history of racially restrictive covenants in the city and the subsequent legal challenges that occurred on the state and local level. Gordon focuses on a key figure in this history, Scovel Richardson, and his seminal case* Dolan v. Richardson. *The Essay argues that Richardson's case served as a precursor to* Shelley *and explains the substance and history of legal arguments deployed by Richardson in the case. Gordon explains that, despite its unsatisfying outcome, this challenge to restrictive covenants in* Richardson *opened the door for the groundbreaking ruling in* Shelley.

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INTRODUCTION

Between 1900 and 1960, the population of St. Louis grew by about thirty percent to just over 750,000.[1] During this span, encompassing the First and Second Great Migrations, the city's African-American population grew more than fivefold to just under 180,000.[2] That growth was matched by an equally dramatic increase in racial residential segregation which—by any measure—rose sharply in the decades before World War II and then, after 1940, levelled off.[3] By 1940, St. Louis was one of the most segregated metropolitan settings in the nation, a dubious distinction it would sustain into the twenty-first century.[4] This was no accident. In the first half of the twentieth century, St. Louis was a sandbox for strategies and mechanisms of racial segregation—including racial zoning, discrimination in private realty and credit, racially-restrictive deed covenants and neighborhood agreements, urban redevelopment, and local intimidation and violence.[5] "Negro housing segregation has been enforced by economic necessity, by law, contract, gentlemen's agreements, and by brute force," as one observer noted in 1931. "Where laws and private contracts have failed, mobs have attempted to maintain the racial integrity of neighborhoods."[6]

St. Louis was also ground zero for the long legal battle against racial segregation. The central case in this history is *Shelley v. Kraemer*, the 1948 Supreme Court ruling which prohibited state enforcement of racially restrictive deed covenants.[7] But *Shelley*, which revolved around a straw-party sale by a renegade African American realtor on a restricted block in

1. Author's calculations based on Steven Manson, Jonathan Schroeder, David Van Riper, Tracy Kugler, & Steven Ruggles, *U.S. Census*, IPUMS NATIONAL HISTORICAL GEOGRAPHIC INFORMATION SYSTEM: Version 15:0, http://doi.org/10.18128/D050.V15.0.

2. *Id.*

3. Colin Gordon, *Dividing the City: Race-Restrictive Deed Covenants and the Architecture of Segregation in St. Louis*, J. URB. HIST. (Mar. 26, 2021) [hereinafter Gordon, *Dividing the City*].

4. *See* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 17–48 (1993); KARL TAEUBER & ALMA TAEUBER, NEGROES IN CITIES: RESIDENTIAL SEGREGATION AND NEIGHBORHOOD CHANGE 54 (1965); Douglas S. Massey & Jonathan Tannen, *A Research Note on Trends in Black Hypersegregation*, 52 DEMOGRAPHY 1025, 1025–34 (2015); Gordon, *Dividing the City*, *supra* note 3.

5. *See* COLIN GORDON, MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY (2008) [hereinafter GORDON, MAPPING DECLINE]; Gordon, *Dividing the City*, *supra* note 3.

6. The President's Conference on Home Building and Home Ownership: A Tentative Rep. of the Comm. on Negro Housing 45 (Dec. 3, 1931), *in* CLAUDE BARNETT PAPERS, Part 3 (on file with the Chicago Historical Society).

7. Shelley v. Kraemer, 334 U.S. 1 (1948).

north St. Louis, was not the test case that civil rights leaders were looking for. The national office of the National Assocation for the Advancement of Colored People (NAACP), eager to challenge racial restrictions but wary of an adverse decision, was rethinking its legal strategy when the plaintiffs in *Shelley* forced its hand.[8] Into the 1940s, its only victories in state and federal courts had been won on technical grounds when the restriction in question had been poorly executed.[9] The NAACP wanted a clean "equal protection" case. But the controversy in *Shelley*, in both the initial circuit court decision and the Missouri Supreme Court's reversal, focused narrowly on the defects in (and the failure of) the original restriction.[10] In turn, *Shelley* was embedded in a distinct local history, shaped both by the trajectory and pattern of restrictions in St. Louis and by a string of legal challenges in local and state courts. A key figure in this local context was a young African-American lawyer and law professor named Scovel Richardson. His seminal case, *Dolan v. Richardson*, served as a precursor to *Shelley* and teed up legal arguments used in this later case.

I. RACE RESTRICTIVE CONVENANTS IN ST. LOUIS

Richardson was born in Nashville in 1912.[11] He graduated from the University of Illinois in 1934, and from law school at Howard University three years later.[12] In 1939, he was appointed to the inaugural faculty of Lincoln University Law School in St. Louis, where he later served as Dean from 1944 to 1954.[13] Upon moving to St. Louis, Richardson joined the St. Louis Negro Bar Association (the precursor to the Mound City Bar Association).[14] Moving to St. Louis confronted Richardson with the harsh realities of systematic segregation in a border state. Lincoln University itself

8. *See* JEFFREY D. GONDA, UNJUST DEEDS: THE RESTRICTIVE COVENANT CASES AND THE MAKING OF THE CIVIL RIGHTS MOVEMENT 103–14, 120–34 (2015); Letter from Thurgood Marshall to St. Louis Real Estate Board (1947), *in* PAPERS OF THE NAACP, PART 05: CAMPAIGN AGAINST RESIDENTIAL SEGREGATION, 1914-1955 (Chicago Conference on Restrictive Covenants, folder 131, Group II, Series B); William B. Rubenstein, *Divided We Litigate: Addressing Disputes among Group Members and Lawyers in Civil Rights Campaign*, 106 YALE L.J. 1627, 1627–31 (1997).

9. Most notably in Hansberry v. Lee, 311 U.S. 32 (1940).

10. Transcript of Record, Kraemer v. Shelley, No. 91,283 (St. Louis Ct. App. Mar. 1946)

11. *Scovel Richardson, U.S. Judge*, N.Y. TIMES, Mar. 31, 1982, at B4.

12. *Id.*

13. Ernesto A. Longa, *A History of America's First Jim Crow Law School Library and Staff*, 7 CONN. PUB. INT. L.J. 77, 96 (2007).

14. *Scovel Richardson, U.S. Judge*, *supra* note 11.

was a reluctant concession to "separate but equal." When the Supreme Court held, in *Missouri ex rel. Gaines v. Canada*, that the state of Missouri was required to offer African Americans equal access to law school,[15] the legislature—rather than open admission to the University of Missouri—hastily appropriated $200,000 to convert a shuttered beauty college in north St. Louis into a segregated alternative.[16]

Alongside the ignominy of "separate but equal" education, Richardson also confronted St. Louis's unique architecture of residential segregation. While the city's 1916 racial zoning ordinance was invalidated by the Supreme Court decision in *Buchanan v Warley* just a year after its passage,[17] local housing interests quickly assembled an alternative, centered on the use of race-restrictive deed covenants or neighborhood agreements. In St. Louis, almost eight hundred such agreements prohibited black occupancy on almost a third of the city's residential property base.[18] These restrictions were of two types in St. Louis: in predominantly white south St. Louis, they were imposed as subdivision restrictions on new construction; on the north side, they were assembled by petition in older neighborhoods facing racial transition. Between 1911 and 1950, over five hundred such petition restrictions—most of them initiated by the white realtor's trade association, the St. Louis Real Estate Exchange—created a ragged circle of restriction around "the Ville," the city's swelling African American neighborhood.[19]

Race-restrictive covenants and agreements were decisive factors in the segregation of St. Louis, hardening the color line where they succeeded and, because they encouraged "tipping" or "block busting,"[20] even where they

15. Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).

16. JAMES W. ENDERSBY & WILLIAM T. HORNER, LLOYD GAINES AND THE FIGHT TO END SEGREGATION (1986); Brad Desnoyer & Anne Alexander, *Race, Rhetoric, and Judicial Opinions: Missouri as a Case Study*, 76 MD. L. REV. 696, 700, 705–10 (2017). For a brief overview of these events, see Hon. Anne-Marie Clarke, *The Mound City Bar Association, Lloyd Gaines, and the Lincoln Law School*, 67 WASH. U.J.L. & POL'Y 1 (2022) (also published in this volume).

17. Buchanan v. Warley, 245 U.S. 60 (1917).

18. Gordon, *Dividing the City*, *supra* note 3, at 3.

19. *Id.* at 5; CLEMENT E. VOSE, CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES 100–21 (1955); HERMAN H. LONG AND CHARLES S. JOHNSON, PEOPLE VS. PROPERTY: RACE RESTRICTIVE COVENANTS IN HOUSING 8–38 (1947).

20. Tipping occurs "when a recognizable new minority enters a neighborhood in sufficient numbers to cause the earlier residents to begin evacuating." Thomas C. Schelling, *Dynamic Models of Segregation*, 1 J. MATH. SOCIO. 143, 181 (1971). Blockbusting is the well-documented practice in which real estate agents facilitate "tipping" by engendering fears of racial transition among white homeowners.

failed.[21] These agreements successfully tied segregation to protection against "nuisances," thereby making that segregation respectable and prudent—hardening assumptions about racial occupancy and property values that would become central tenets of professional realty and home finance, of local land use and economic development policies, and of the tangle of public policies and private practices that constituted "redlining."[22]

All of this was accentuated by World War II, which spawned the Second Great Migration but, in response, also encouraged white homeowners, realtors, and developers to shore up the infrastructure of restriction. The NAACP and Thurgood Marshall targeted residential restrictions as "the foremost problem confronting Negroes today,"[23] as the principal culprit in the housing crisis of the 1940s, and as the root cause of the segregation of education and other public goods.[24] For these reasons, Scovel Richardson called out the "acute housing problem of the colored people within the ring of steel thrown around them by so-called restrictive agreements,"[25] and he set out to challenge the practice in St. Louis.

See ROSE HELPER, RACIAL POLICIES AND PRACTICES OF REAL ESTATE BROKERS (1969); David A. Snow & Peter J. Leahy, *The Making of a Black Slum-Ghetto: A Case Study of Neighborhood Transition*, 16 J. APPLIED BEHAV. SCI. 459 (1980).

21. Robert C. Weaver, *Race Restrictive Housing Covenants*, 20 J.L. & PUB. UTIL. ECON. 183, 184 (1944); Yana Kucheva & Richard Sander, *The Misunderstood Consequences of* Shelley v. Kraemer, 48 SOC. SCI. RSCH. 212 (2014); Colin Gordon & Sarah K. Bruch, *Home Inequity: Race, Wealth, and Housing in St. Louis, 1940-1916*, 35 HOUS. STUD. 1285 (2019).

22. *See* RICHARD R. W. BROOKS & CAROL M. ROSE, SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS 14, 211–30 (2013); PAIGE GLOTZER, HOW THE SUBURBS WERE SEGREGATED: DEVELOPERS AND THE BUSINESS OF EXCLUSIONARY HOUSING, 1890-1960 5 (2020); CLARISSA RILE HAYWARD, HOW AMERICANS MAKE RACE: STORIES, INSTITUTIONS, SPACES 111–50 (2013); GONDA, *supra* note 8, at 25.

23. Memorandum from Thurgood Marshall to the Members of the NAACP National Legal Committee (June 13, 1945), *in* PAPERS OF THE NAACP, PART 05: CAMPAIGN AGAINST RESIDENTIAL SEGREGATION, 1914-1955 (Chicago Conference on Restrictive Covenants, folder 131, Group II, Series B).

24. *See* VOSE, *supra* note 19; *see also* GONDA, *supra* note 8; ROBERT WEAVER, THE NEGRO GHETTO 231 (1948).

25. Appellants' Abstract of the Record at 9, Dolan v. Richardson, 181 S.W.2.d 997 (Mo. Ct. App. 1944) (No. 26502).

II. CHALLENGING RESTRICTIVE COVENANTS: *DOLAN V. RICHARDSON*

Richardson's challenge began with the strategic purchase of a house in a white neighborhood. The house at 4635 North Market Street, located at the western edge of the Ville, was restricted to "Caucasian" occupancy due to a flurry of restrictions in the early 1920s pushed by the Real Estate Exchange and local neighborhood improvement associations.[26] Officers of the Exchange had collected signatures from 73 property owners, who represented 79 of the 83 parcels fronting the 4600 block of North Market and both sides of Wagoner Place between Easton (now Martin Luther King) and North Market.[27] The agreement followed the language of the Exchange's template. A preamble announced the goal of preserving "the character of said neighborhood as a desirable place of residence for persons of the Caucasian race," and the body of the agreement prohibited two "nuisance" uses of property: the erection, maintenance, or operation of "any slaughterhouse, junk shop, or rag-picking establishment," and the sale or conveyance to, or occupancy by, "a negro or negroes."[28]

In July of 1941, Richardson engineered the sale of 4635 North Market to a straw party, breaking the chain of title to the original signatory of the restriction, and then he and his wife Inez purchased the property themselves in early October.[29] The reaction was swift. On October 18 and again in early November, stench bombs were thrown onto the Richardsons' front porch and onto the porches or through the windows of the Richardsons' few African-American neighbors.[30] The Real Estate Exchange, a party to the underlying restriction (alongside the buyer and seller), immediately filed suit in the St. Louis Circuit Court in January 1942 to enjoin the sale—and

26. *See* GORDON, MAPPING DECLINE, *supra* note 5, at 79–83.
27. St. Louis Recorder of Deeds, Book 3841-386 (1923).
28. *Id.*
29. *See* St. Louis Assessor, Deed Books 1122-74 (July 1941), and 1129-96 (Oct. 1941).
30. *Law Professor Must Go To Court; Eviction Is Sought: Residential Battle Rages In St. Louis*, ATLANTA DAILY WORLD, Oct. 29, 1941, at 1; *Lincoln Professor Faces Covenant Fight: Order Teacher and Four Others Out of Mo. Homes*, CHI. DEF., Nov. 1, 1941, at 5; *Stench Bomb Again Hurled*, ST. LOUIS ARGUS, Sept. 19, 1941, at 1; *Harm Negro Homes: 5 Race Families Get Threats*, ST. LOUIS ARGUS, Oct. 24, 1941, at 1; *Continue N. Market Neighborhood Suits: Homes Stench Bombed*, ST. LOUIS ARGUS, Nov. 14, 1941, at 1; *More Negro Homes Stench Bombed*, ST. LOUIS ARGUS, Dec. 5, 1941, at 1.

the case was heard in March of 1942.[31] The positions taken by Richardson and his colleagues at trial both captured the legal status of race restrictions in the early 1940s and pushed the argument towards the more robust "equal protection" challenge that would eventually prevail in 1948.

In 1941 when the Richardsons purchased 4635 North Market, the law was not on their side. The Supreme Court's *Buchanan v. Warley* decision in 1917, striking down racial zoning, offered a sliver of hope.[32] But zoning was distinguishable in that it was unambiguously "state action," and the *Buchanan* decision was effectively a defense of property rights.[33] When asked to consider the constitutionality of race-restrictive deed covenants a decade later, the Court made both distinctions clear. In *Corrigan v. Buckley*, the Justices declined to entertain a challenge to race restrictions on the grounds that "[nothing] prohibited private individuals from entering into contracts respecting the control and disposition of their own property," and that the "alleged constitutional questions [are] so unsubstantial as to be plainly without color of merit and frivolous."[34] This deference to private contracts was echoed in the Missouri precedents. In *Koehler v Rowland*, the Missouri Supreme Court not only underscored that "the restriction was one which the vendor had a right to make" but held that such agreements complemented public policy, "as the purpose was to preserve the segregated nature of the property, and such discrimination was recognized in other matters."[35] In 1938, the Missouri Appellate Courts doubled down on this conviction, holding in *Porter v. Johnson* that signatories of restrictive covenants "should have confidence in the power and willingness of the courts to protect their investment in happiness and security."[36]

Richardson cast a wide net at trial. Drawing on recent decisions in St. Louis and anticipating the trial strategy in *Shelley*, he began by hammering away at the deficiencies and defects in the original restriction covering 4635 North Market. While Missouri Courts left unquestioned the right of property

31. Dolan v. Richardson, Circuit Court of the City of St. Louis 53039, Div. 2 (1942); Appellants' Abstract of the Record at 13, Dolan, 181 S.W.2d 997.

32. *See supra* note 17 and accompanying text.

33. Michael J. Klarman, *Race and the Court in the Progressive Era*, 51 VAND. L. REV. 881, 881 (1998); Buchanan v. Warley, 245 U.S. 60 (1917).

34. Corrigan v. Buckley, 271 U.S. 323 (1926); BROOKS & ROSE, *supra* note 22, at 54; VOSE, *supra* note 19, at 15–18.

35. Koehler v. Rowland, 205 S.W. 217 (Mo. 1918).

36. Porter v. Johnson, 115 S.W.2d 529, 535 (Mo. Ct. App. 1938); *see also* VOSE, *supra* note 19, at 1.

owners to enter into and enforce restrictive agreements, they had begun to look more closely at the instruments themselves and the terms under which they were drafted. These challenges advanced three interwoven arguments. The first focused on flaws in the original agreement, including invalid signatures, misrepresentation of the agreement to those who did sign, and failure to attach the agreement to the chain of title of restricted properties.[37] A second argument in this vein revolved around the threshold of coverage or participation. What share of owners needed to sign to make an agreement valid? Were only signatories bound by the agreement?[38] And third, parties and judges were increasingly attentive to changes in neighborhood conditions; i.e., to the argument that racial transition made further enforcement of a restriction moot or futile, as well as unfair to those who wanted out in the face of such transition.[39]

To attack the instrument itself using these arguments, Richardson drew on a trio of recent St. Louis cases. In *Mueninghaus v. James*, the Missouri Supreme Court upheld a lower court ruling that a restriction near Fountain Park in St. Louis could not be enforced because the original owner of the property had declined to sign the agreement.[40] Neither he, nor his African-American buyer, could be bound by a contract that neither were a party to.[41] In *Pickel v. McCawley*, the Supreme Court let stand a ruling voiding the restriction in question, dismissing the lower court's finding that the original agreement was defective but agreeing with its assessment that "conditions in the neighborhood" (on Finney Avenue in north St. Louis) had changed radically, and that "the essential object of the covenants were then totally destroyed. Negroes were at liberty to buy and did purchase and occupy many homes . . . within the proposed restricted district. There is no valid reason why the restrictions should be saddled upon plaintiffs in this case. They are living under the very conditions and surroundings against which the proposed covenant was to protect them."[42] Or, as Emma Pickel herself

37. Because petition restrictions were not drafted in the context of a sale or transfer of property, they were often recorded as "wild deeds" not indexed or attached to the core property records. *See* BROOKS & ROSE, *supra* note 22, at 80–81, 150–52.

38. *See* VOSE, *supra* note 19, at 117–18.

39. *See* Thornhill v. Herdt, 130 S.W.2d 175 (Mo. Ct. App. 1939).

40. Mueninghaus v. James, 24 S.W.2d 1017 (Mo. 1930).

41. *Id.*

42. Pickel v. McCawley, 44 S.W.2d 857 (Mo. 1931).

testified: "If I look out my back window I see negroes, and the front door it is negroes . . . I am tied up in my own house."[43]

Especially useful to Richardson in this respect was *Thornhill v. Herdt*—a recent case that pulled together various arguments about the deficiencies or failures of restrictive agreements.[44] In *Thornhill*, the Circuit Court voided the restriction (on Vinegrove Avenue in St. Louis) on the grounds that it had failed in its purpose. The Missouri Supreme Court upheld the ruling but crafted its own reasoning, arguing that the point of the agreement was not just to bind its signatories but to attract enough signatories for the agreement to succeed as a "neighborhood scheme" of restriction. "While it is true that covenants or agreements creating racial restrictions of the kind in question are generally sustained by the courts as against objections going to the validity of instruments of such character," the Court noted, "this can only be so where they are entered into in such a manner and with such completeness as to give them force and effect."[45] Anything less than universal agreement, in the Court's view, doomed a restriction to failure. Even one or two holdouts could invite racial transition.[46] As the decision concluded, "[t]his Court, and every other resident of the City of St. Louis knows that it is impossible to secure a white tenant of respectability when negroes live on each side of the premises. The only white tenant who will

43. Appellant's Abstract of the Record, Pickel v. McCawley 329 Mo. 166 (1931) (No. 29630).
44. *Thornhill*, 130 S.W.2d 175.
45. *Id.* at 178.
46. In *Thornhill*, the Court framed the goal of neighborhood restriction as a collective action problem.

> A neighborhood scheme of restrictions to be effective and enforceable must have certain characteristics. It must be universal; that is, the restrictions must apply to all lots of like character brought within the scheme. Unless it be universal it cannot be reciprocal. If it be not reciprocal, then it must as a neighborhood scheme fall, for the theory which sustains a scheme or plan of this character is that the restrictions are a benefit to all. The consideration to each lot owner for the imposition of the restriction upon his lot is that the same restrictions are imposed upon the lots of others similarly situated. If the restrictions upon all lots similarly located are not alike, or some lots are not subject to the restrictions while others are, then a burden would be carried by some owners without a corresponding benefit.

Id. at 179.

ever be procured for respondent's premises is some person who is hiding from the police or seeking to cover his tracks in some way."[47]

Richardson leaned heavily on these arguments in his own case, citing both defects in the original restriction and changing conditions in the neighborhoods. "A large number of property owners in the alleged restrictive area did not sign said alleged restrictive agreement," he pointed out, adding that "plaintiffs have acquiesced in numerous breaches and violations of the alleged restrictive agreement, and in the ownership by colored persons within the alleged restrictive area."[48] At trial, Richardson grilled the notary who had drawn up the agreement regarding missing signatures and brought in a hand-writing expert to bolster his claim that some owners had signed for others.[49] Indeed, the bulk of Richardson's case hinged on his denial "that there ever was in existence at any time or is now in existence any duly executed or valid instrument . . . which gives plaintiffs authority to prosecute this action."[50]

Such arguments remained an important part of local and national challenges to race restrictions. Even as it sought a firmer constitutional foothold, the NAACP devoted much of its 1945 Chicago conference on restrictive covenants to enumerating the defects and flaws that could be used to undermine the validity of an agreement.[51] Richardson himself penned a short note for the *National Bar Journal* in 1945 which drew on his own experience to argue that restrictive agreements were so riven with errors and lapses in documentation that they were both an offense to equal protection and "a fraud upon the persons who sign."[52] And, of course, this was the opening gambit a year later in the first *Shelley* case.[53]

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47. Respondents' Statement, Points and Authorities, and Argument at 26, *Thornhill*, 130 S.W.2d 175.

48. Appellants' Abstract of the Record at 17–44, Dolan v. Richardson, 181 S.W.2d 997 (Mo. Ct. App. 1944) (No. 26502).

49. *Id.* at 156–66.

50. *Id.* at 5.

51. *See* Charles Houston, Potentialities of Change of Neighborhood Doctrine (July 9, 1945), and Spottiswoode Robinson, Analysis of cases where person selling to Negro did not sign covenant, *in* PAPERS OF THE NAACP, PART 05: CAMPAIGN AGAINST RESIDENTIAL SEGREGATION, 1914-1955 (Chicago Conference on Restrictive Covenants, folder 131, Group II, Series B).

52. Scovel Richardson, *Some of the defenses available in restrictive covenant suits against colored American citizens in St. Louis*, 3 NAT'L B.J. 50 (1945).

53. *See* George Vaughn (July 9, 1945), *in* PAPERS OF THE NAACP, PART 05: CAMPAIGN AGAINST RESIDENTIAL SEGREGATION, 1914-1955 (Chicago Conference on Restrictive Covenants, folder 131, Group II, Series B); VOSE, *supra* note 19, at 112.

But, as Richardson and his colleagues recognized, such arguments were also inherently limited. Almost all the flaws and defects (missing signatures, incomplete coverage, failure to attach restrictions to the chain of title, change in neighborhood conditions) that lay behind these challenges were peculiar to petition-based restrictive agreements. They did little to challenge the larger scale, more carefully drafted racial restrictions routinely attached to new subdivisions—which accounted for over forty percent of restricted parcels in the City of St. Louis and for virtually all the restricted parcels in suburban St. Louis County.[54] And while challenging the veracity of signatures might void a given restriction, it did little to chip away at the larger injustice.

For these reasons, Richardson and his colleagues raised a series of more fundamental objections. One was to challenge the racial categories at the core of the restrictions. The designation "Caucasian Race" that prefaced the Exchange's uniform restrictive agreement, in this view, was an ambiguous foundation for exclusion. It had a more capacious, albeit more contested, meaning in the "eugenics" logic of the first generation of restrictions.[55] And, while increasingly synonymous with "white," especially in distinctly biracial St. Louis, the word "Caucasian" was inconsistently applied to national and religious minorities, including Jews.[56] This argument followed the lead of the NAACP. At the Association's 1945 Chicago conference, Charles Houston recommended challenging the core assumptions as to the meaning of white and Negro (what we would today call the social construction of race). "One technique is to start out denying that the plaintiffs are white." He suggested, "[t]here has been a past tendency to draw clear cut lines admitting that the plaintiffs are white and the defendants are Negroes. The first thing I recommend is to deny that the plaintiffs are white and the defendants are Negroes."[57]

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54. Gordon, *Dividing the City*, *supra* note 3.

55. *See* Peggy Pascoe, *Miscegenation Law, Court Cases, and Ideologies of "Race" in Twentieth-Century America*, 83 J. AM. HIST. 44, 44–69 (1996).

56. On restrictions against Jews, see ROBERT M. FOGELSON, BOURGEOIS NIGHTMARES: SUBURBIA, 1870-1930 128–31 (2005); GLOTZER, *supra* note 22, at 126–28, 132–34; and Virginia P. Dawson, *Protection from Undesirable Neighbors: The Use of Deed Restrictions in Shaker Heights, Ohio*, 18 J. PLAN. HIST. 116 (2019).

57. Charles Houston, Potentialities of Change of Neighborhood Doctrine (July 9, 1945), *in* PAPERS OF THE NAACP, PART 05: CAMPAIGN AGAINST RESIDENTIAL SEGREGATION, 1914-1955 (Chicago Conference on Restrictive Covenants, folder 131, Group II, Series B); *see also* VOSE, *supra* note 19, at 60–61.

Richards put his own spin on this at trial. He was "willing to stipulate that he is a member of the colored race, and a colored American, but not as to the term 'negro.'"[58] For Richardson, the former was a racial classification and the latter a social and political one. "As a defendant I cannot help but have personal feelings about it," he continued, "and the word 'negro' to my mind denotes something black and despicable, and if I am to be classified as a negro, according to this agreement along in the same category with slaughterhouses, junk-shops, rag-picking establishments, it is impertinent and scandalous to me. I have always stated that I am a colored person and an American citizen."[59] With this line of argument, Richardson underscored both the ambiguity of racial categories such as "Caucasian," and the slippery legal logic of racial identification and self-identification.[60]

Leveraging the logic of the Court's decision in *Buchanan*, Richardson also pressed to cast racial restrictions as an invasion of the civil right to acquire, enjoy, and use property.[61] This seemed a promising argument, as it played off the legal and political veneration of property rights, and it invoked both the burden on potential (Black) buyers and on willing (white) sellers, especially in transitional neighborhoods. While courts were loath to impose constraints on alienation (the right to buy or sell), they were increasingly receptive to constraints on use. Private race restrictions danced around these distinctions, an uncertainty reflected in the exhaustive language of restriction:[62] "No lot, house or improvement of any kind in said Subdivision, or an interest therein," as an early St. Louis restriction spelled it out, "be sold, leased, rented, conveyed or transferred, willed, devised or in any way or manner given, granted or disposed of to or occupied by any person or persons not of the Caucasian Race."[63] Most restrictions were

58. Appellants' Abstract of the Record at 84–85, Dolan v. Richardson, 181 S.W.2d 997 (Mo. Ct. App. 1944) (No. 26502).

59. *Id.* at 85.

60. This confusion was suggested by the variety of terms and concepts used to draw the color line in local race restrictions, including Caucasian, Negro, colored, black, white, and African. One restriction in St. Louis County prohibited occupancy by "any person having one thirty-second part or more negro blood" and went on to advise that "the Court or jury trying any case . . . may determine the proportion of negro blood in any party who may be in possession of the property by the appearance of such person." St. Louis County Recorder, Deed Book 343-158 (1914).

61. *See* Buchanan v. Warley, 245 U.S. 60 (1917).

62. *See* FOGELSON, *supra* note 56, at 46–48; *see also* BROOKS & ROSE, *supra* note 22, at 8; VOSE, *supra* note 19, at 4–5, 19–22.

63. Restriction on Oakland Terrace First Addition, St. Louis Recorder of Deeds, Deed Book 2952-22 (1916).

framed as a prohibition of "nuisances" (slaughterhouses, junk shops, negro occupancy), and held that such prohibitions could be imposed not just on owners but as a condition of sale. As the Missouri Supreme Court reasoned in *Koehler v. Rowland*, "[i]t is the rule that an absolute restriction in the power of alienation in the conveyance of a fee simple title is void, but it is entirely within the right and power of the grantor to impose a condition or restraint upon the power of alienation in certain cases to certain persons, or for a certain time, or for certain purposes."[64]

Richardson pulled on all these threads when laying out his argument that race restrictions invaded property rights. The restriction, he asserted, imposed an "unconscionable, oppressive, and iniquitous" burden on prospective African-Americans buyers and renters, especially given the acute housing shortage of the war years.[65] But it was also destructive of the rights of all who lived in the restricted area. "The property owners on whose behalf this action is alleged to be instituted will be deprived of their property rights," Richardson argued, noting that the "alleged restrictive agreement . . . destroys the marketability of land, interferes with the free sale and use thereof, prevents improvements to land and property, [and] encourage waste and disuse of property."[66] If the courts could not be persuaded that equal access to housing was a civil right, they might—as Richardson's argument suggested—be persuaded that constraints on equal access undermined property rights.

As the NAACP positioned itself for another run at race restrictions, it also drew on the social sciences to demonstrate the impact of such restrictions on African-American citizens and communities.[67] Such an approach was, in effect, a broader construction of the notion that such private restrictions were "contrary to public policy," based not on a demonstrable legal controversy but on evidence that the policy of enforcing race restrictions ran counter to or frustrated others—such as housing availability and conditions or the public health and welfare. The crux of the NAACP's litigating position was an effort to flip the script on the prevailing assumption that African American occupancy was a nuisance that destroyed property values. Instead, Robert Weaver and others argued that restrictive

64. Koehler v. Rowland, 205 S.W. 217 (Mo. 1918).
65. Appellants' Abstract of the Record at 9, *Dolan*, 181 S.W.2d 997.
66. *Id.* at 9–10.
67. VOSE, *supra* note 19, at 64–68; GONDA, *supra* note 8, at 135–50.

covenants distorted the natural trajectory of neighborhood transition and, by choking housing supply, created the very conditions they purported to combat. "The primary causes for blight and a decline in property values are not racial," Weaver concluded bluntly, "they are economic. . . . the Negro has become a handy dumping-ground for obsolescent property."[68]

Richardson echoed these arguments in *Dolan*, contesting the general argument that African-American occupancy hurt property values, and hammering away at the immediate impact of racial restrictions during the wartime housing crisis. Even if the agreement were valid, in Richardson's view, its enforcement would "strike a severe blow to the public health, morals, safety, and general welfare of St. Louis."[69] Enforcement would not just limit the housing options available to African Americans, he continued, but it "would compel their increasing population, due both to the increase in the birth rate and migration from the South, to live in an overcrowded and slum-ridden section of the city. This situation would breed disease and develop criminals."[70] Restrictions were not a response to housing conditions and property values in African-American neighborhoods, but their proximate cause. In the months between the first *Dolan* trial in 1942 and the appellate decision in 1944, local courts increasingly accepted this argument. "They must live somewhere," as one St. Louis Circuit Court judge argued, " . . . east of the area involved, property is occupied solely by Negroes and there is a sprinkling of Negroes to the west and northwest. Conditions have changed in the 20 years since the restrictive agreement was signed."[71]

The central goal of the legal campaign against racial restriction, of course, was to get the courts to see racial restrictions as a matter of public policy rather than as private agreements. The *Slaughterhouse Cases* in 1872[72] had firmly embedded the principle that the Fourteenth Amendment protected rights only against *state action*, and *Plessy v. Ferguson* in 1896 had opened the door to the "separate but equal" provision of public goods and services. This was the logic at the core of the Supreme Court decision to pass on *Corrigan v. Buckley* and of the state precedents regarding race

68. Weaver, *supra* note 21, at 184, 190.
69. Appellants' Abstract of the Record at 9, *Dolan*, 181 S.W.2d. 997.
70. *Id.* at 9.
71. *See* REFUSES INJUNCTION RESTRAINING NEGROES FROM ENRIGHT AREA, (Sept. 28, 1943); COURT FINDS AGAINST OLD NEGRO RESTRICTION ON ENRIGHT BLOCKS, (Sept. 27, 1943), *reprinted in* ST. LOUIS PUBLIC LIBRARY, SEGREGATION CLIPPINGS COLLECTION.
72. *See* Slaughterhouse Cases, 83 U.S. 36 (1872).

restrictions on property in Missouri. As the Missouri Supreme Court argued in 1918:

> There is nothing against public policy in inserting a condition in a deed that the property shall not be sold or leased to colored people. Such restrictions, tend to promote peace and to prevent violence and bloodshed, and should be encouraged. The courts have sustained laws providing for separate schools for negroes and separate coaches on railroad trains, and even in street cars, and laws prohibiting negroes from attending theatres attended by white people and segregating negroes and whites in cities. The covenants contained in this deed are perfectly reasonable, lawful and binding.[73]

In order to make the legality of racial restrictions a *constitutional* question, rather than one that hinged on the arcane details of state level contract or property law, Richardson needed to press the argument that private restrictive agreements, in some manner or form, depended on "state action." The strongest argument in this respect, which would eventually prevail in *Shelley*, was that enforcement of private agreements constituted state action.[74] The NAACP was looking for any means of managing this pivot and making racial restrictions a constitutional issue. And so, while civil rights leaders were horrified by the willingness of federal authorities to sanction and even encourage racial restrictions in federal housing policy, they also recognized this implicated state actors and state agencies even further in the maintenance of segregation. At its 1945 Chicago conference and after, the NAACP devoted considerable attention to federal policies—especially urban renewal and public housing—which might bolster this argument.[75] As William Hastie, who would later become a federal judge, recalled: "We sought certiorari raising every possible ground . . . called it

73. Koehler v. Rowland, 205 S.W. 217 (Mo. 1918).

74. This connection was made as early as 1891 in *Gandolfo v. Hartman*, a California case which struck down a restriction against "Chinamen" on the grounds that—as the trial judge reasoned—it made little sense to hold that state and local governments could not discriminate by race but that "a citizen of the state may lawfully do so by contract, which the courts may enforce." BROOKS & ROSE, *supra* note 22, at 51–53.

75. Monday July 9, 1945 meeting notes, *in* PAPERS OF THE NAACP, PART 05: CAMPAIGN AGAINST RESIDENTIAL SEGREGATION, 1914-1955 (Chicago Conference on Restrictive Covenants, folder 131, Group II, Series B).

state action by the Court in enforcing court-made rule of property law; tried to show that this state action was a denial of equal protection."[76] In 1944, they unsuccessfully pressed the Supreme Court to take up the District of Columbia case *Mays v. Burgess*, in which in which a dissenting appellate justice had observed the shaky logic of enforcing "a privately adopted segregation plan which would be unconstitutional if it were adopted by a legislature."[77]

At trial, Richardson pressed a similar argument. He argued that restrictive agreements abridged the privileges and immunities and due process clauses of the Fourteenth Amendment, interfering with the freedom of contract of white property owners and prospective black buyers alike.[78] Such restrictions, Richardson underscored, "expressly [contemplate] and [provide] for state action and the use of state agencies, its courts and its public officers in the enforcement of said alleged restrictive agreement in violation of the Fourteenth Amendment of the Constitution of the United States of America."[79] In his questioning of the Real Estate Exchange's Ray Dolan, Richardson expanded on this point, arguing the Real Estate Exchange had no standing under its charter to enter into such restrictive agreements and that, because "the Real Estate Exchange gets its authority from the State of Missouri," the corporate charter implicated the State in any actions taken by the Exchange.[80] "The Exchange is a corporation obtaining its existence from the State," Richardson reasoned, "and being the creature of the State, it can have no greater power than its creator. No state can grant to a corporation power to do that which the federal constitution forbids it to do itself . . . what a state is forbidden to do directly, it may not do by indirection."[81]

At trial, Richardson argued his own case, assisted by Mound City attorneys Joseph McLemore and Robert Witherspoon.[82] Though Richardson floated all of the objections discussed above, the court narrowed its attention

76. *Id.*

77. Mays v. Burgess, 147 F.2d 869, 875 (D.C. Cir. 1945) (Edgerton, J., dissenting); Mays v. Burgess, 152 F.2d 123 (D.C. Cir. 1945). For the larger context of this case, see Sarah Jane Shoenfeld & Mara Cherkasky, *A Strictly White Residential Section*, 29 WASH. HIST. 24 (2017).

78. Appellants' Abstract of the Record at 9–10, Dolan v. Richardson, 181 S.W.2d 997 (Mo. Ct. App. 1944) (No. 26502).

79. *Id.* at 10.

80. *Id.* at 43–45.

81. *Id.*; *see also* Richardson, *supra* note 52, at 53–57.

82. Appellants' Abstract of the Record at 9–10, *Dolan*, 181 S.W.2d 997.

to just one: Richardson's exhaustive documentation of the technical flaws in the original 1923 agreement, which included missing signatures, signatures in wrong places, and husbands signing for their wives. "Defendants established to the Court's satisfaction and it would appear almost somewhat to the point where plaintiffs could not refute," states the decision, "that in the original execution of the alleged restriction there had been several defects."[83] The Real Estate Exchange appealed, and the Missouri Court of Appeals agreed to hear the case in early 1943.

Handed down in July 1944, the appellate decision rested on a mundane but overlooked detail. "At the threshold of this case, we are met with this situation," the Court noted, "[b]oth the pleadings and the evidence upon the trial in the lower court showed that the restrictive agreement which formed the basis of the plaintiff's action expired by its own terms on December 18, 1942." Rather than rule on the merits of the case, the Court declined to proceed with the "empty formality" of rendering a decision where "no actual controversy exists between plaintiffs and defendants."[84] All of the strategic legal arguments Richardson made thus evaporated with the court's decision to dismiss the case because the restriction had expired.[85] Richardson had "won" and lived at 4635 North Market another fourteen years, selling the house in 1958 only after his appointment to the United States Custom Court required him to relocate to New York.[86]

It was a hollow victory. The Richardsons were able to keep their house, but the Appeals Court declined to weigh in on any of the issues raised by the case. All that was left was the Circuit Court's original determination that the restriction was unenforceable because it was so sloppily executed—a ruling implying that, had the Exchange been more attentive in collecting signatures, the restriction would have been perfectly valid. Yet despite its whimper of a resolution, *Dolan v. Richardson* remains a telling and important case. Like *Shelley*, it arose in the context of racial restrictions in St. Louis during the Second Great Migration and, in many respects, more closely hewed to the "test case" that the NAACP was searching for.

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83. *Id.* at 173.
84. *Dolan*, 181 S.W.2d 997.
85. *Dolan*, 181 S.W.2d 997.
86. *Scovel Richardson, U.S. Judge*, N.Y. TIMES, Mar. 31, 1982, at B4; *see* St. Louis Assessor, Deed Books 1490-40 (July 1958).

Dolan v. Richardson disappeared from the jurisprudence of equal protection and, in the ensuing years, was primarily cited as an authority on the question of whether courts should weigh in on moot questions.[87] Yet for Richardson and for his colleagues in the national NAACP, this was a key moment in the fight against racial restrictions. Subsequent cases in state courts which hinged on defects in the execution of race restrictions, or on their failure to stem racial transition, opened some neighborhoods but did not fundamentally challenge the practice of private restriction itself. But Richardson remained ready for the perfect case to come along. "The sooner those who persist in restrictive covenants against colored American citizens in St. Louis can prepare a covenant which meets the technical requirements of the law," as Richardson reflected in 1945, "the sooner we can go to the United States Supreme Court and obtain the ruling we are entitled to as American citizens."[88]

87. *See* Laws.' Ass'n of St. Louis v. St. Louis, 294 S.W.2d 676 (Mo. Ct. App. 1956); State *ex rel.* McKenzie v. La Driere, 294 S.W.2d 610 (Mo. Ct. App. 1956).

88. Richardson, *supra* note 50, at 56.

III. *SHELLEY V. KRAEMER* AND ITS IMPACT

The ruling Richardson was hoping for came four years later. Richardson's Mound City colleague George Vaughn opened the oral argument on behalf of his clients, the Shelleys, in a Supreme Court hearing that combined the St. Louis case with ones from Detroit and the District of Columbia.[89] By most accounts, Vaughn's argument was underwhelming.[90] He spun an argument around the Thirteenth Amendment's prohibition of slavery, bucking the strategy of the NAACP and opening the case on a dreary and confusing note. "He didn't cut through the underbrush," one of the Solicitor General's lawyers recalled, "he got caught in it."[91] NAACP stalwarts Charles Houston, Thurgood Marshall, and Loren Miller argued the other two cases, and it was Marshall and Miller's invocation of the Fourteenth Amendment in the Michigan case, and their reasoning that enforcement of restrictions constituted clear state action, that carried the day.[92]

For Scovel Richardson, the NAACP, and the Shelley family and millions like them, it was a victory that was at once momentous and fleeting. The prohibition on state enforcement of private racial restrictions, like the blow to "separate but equal" won in *Brown v. Board of Education* six years later, transformed the meaning of the law, but the decision could neither undo the damage that had been done nor stem the determination of state and private actors alike to evade its clear intent.

Private housing interests, of course, had other means of accomplishing and sustaining segregation. Race restrictions, in this respect, formalized—even made respectable—other private strategies of racial exclusion and subordination that predated the use of deed covenants, ran alongside them, and remained very much in place after 1948. Such strategies included opportunities for racial discrimination at every stage of the process of buying or renting a home: uneven access to credit and home insurance, racially disparate property appraisals, neighborhood "steering" by realtors, the recalcitrance of developers, and "move in" violence and other forms of

89. VOSE, *supra* note 19, at 201–02.

90. Rubenstein, *supra* note 8; GONDA, *supra* note 8, at 156.

91. Rubenstein, *supra* note 8, at 1630 (quoting Philip Elman & Norman Silber, *The Solicitor General's Office, Justin Frankfurter, and Civil Rights Litigation, 1946-1960: An Oral History*, 100 HARV. L. REV. 817, 819 (1987)).

92. VOSE, *supra* note 19, at 199–210.

intimidation.[93] And private assumptions about housing value and African American occupancy continued to shape public housing policies—from the notorious "security" ratings of the Home Owners' Loan Corporation in the 1930s and 1940s through the entire sordid history of public housing and urban redevelopment.[94]

Of even greater lasting damage in Greater St. Louis was the explosion of municipal incorporation and land-use zoning in direct response to the *Shelley* decision. No longer able to use deed restrictions to control racial occupancy, developers and municipalities turned to exclusionary land-use policies, including a preference for large-lot single family zoning and effective prohibitions on commercial or multi-family development.[95] The result was an unprecedented wave of "white flight," as opportunities for exclusion collapsed in St. Louis and were reinvented in its suburbs.[96] Between 1950 and 1980, the white population of the City of St. Louis collapsed by two thirds—from just over 700,000 to under 250,000.[97]

The result was devastating, especially across north St. Louis. The end of racial restrictions, in one respect, finally cracked open the "ring of steel" around the Ville and opened new housing opportunities north of Delmar. Between 1940 and 1980, the number of African American homeowners in St. Louis increased more than tenfold from 2,108 to 25,984, and the African

93. On discrimination in real estate, see HELPER, *supra* note 20; JOHN YINGER & STEPHEN ROSS, THE COLOR OF CREDIT: MORTGAGE DISCRIMINATION, RESEARCH METHODOLOGY, AND FAIR-LENDING ENFORCEMENT (2002); and Max Besbris & Jacob Faber, *Investigating the Relationship Between Real Estate Agents, Segregation, and House Prices: Steering and Upselling in New York State*, 32 SOCIO. F. 850 (2017). On violence and intimidation, see ARNOLD HIRSCH, MAKING THE SECOND GHETTO (1983); Thomas Sugrue, *Crabgrass-Roots Politics: Race, Rights, and the Reaction against Liberalism in the Urban North, 1940-1964*, 82 J. AM. HIST. 551, 578 (1995); and JEANNINE BELL, HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF RACIAL SEGREGATION IN AMERICAN HOUSING (2013).

94. Todd Michney & LaDale Winling, *New Perspectives on New Deal Housing Policy: Explicating and Mapping HOLC Loans to African Americans*, 46 J. URB. HIST. 150 (2020); RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 63–67 (2017); GORDON, MAPPING DECLINE, *supra* note 5, at 88–111; Jon C. Teaford, *Urban Renewal and Its Aftermath*, 11 HOUS. POL'Y DEBATE 443 (2010); EDWARD GOETZ, NEW DEAL RUINS (2013).

95. Michael N. Danielson, *The Politics of Exclusionary Zoning in Suburbia*, 91 POL. SCI. Q. 1, 1–18 (1976); Jacob Rugh & Douglas S. Massey, *The Intersections of Race and Class: Zoning, Affordable Housing, and Segregation in U.S. Metropolitan Areas*, *in* THE FIGHT FOR FAIR HOUSING 245–65 (Gregory D. Squires ed., 2018); Allison Shertzer, Tate Twinam & Randall P. Walsh, *Race, Ethnicity, and Discriminatory Zoning* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 20108, 2014).

96. Kucheva & Sander, *supra* note 21.

97. Author's calculations based on Manson et al., *supra* note 1.

American homeownership rate jumped from 7.2% to 38.6%.[98] But racial exclusion from housing markets was simply now accompanied by exploitation within them. Declining property values in central city neighborhoods; predatory lending; and discriminatory patterns of zoning, property appraisal, and code enforcement meant that increasing rates of homeownership were matched by diminishing returns.[99] The upshot, in St. Louis and elsewhere, was the stubborn persistence of segregation and a steady widening of the racial wealth gap, even as civil rights jurisprudence chipped away at the formal mechanisms of discrimination or exclusion.[100]

98. *Id.*

99. KEEANGA YAMAHTTA-TAYLOR, RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP (Heather Ann Thompson & Rhonda Y. Williams eds., 2019); Bruch & Gordon, *supra* note 21, at 1285–308; JOHN YINGER, CLOSED DOORS, OPPORTUNITIES LOST: THE CONTINUING COST OF HOUSING DISCRIMINATION (1995); Andrew Kahr, *The Short End of Both Sticks: Property Assessment and Black Taxpayer Disadvantage in Urban America*, *in* SHAPED BY THE STATE: TOWARD A NEW POLITICAL HISTORY OF THE TWENTIETH CENTURY 189 (Brent Cebul et al. eds., 2019); Chenoa Flippen, *Unequal Returns to Housing Investments? A Study of Real Housing Appreciation among Black, White, and Hispanic Households*, 82 SOC. FORCES 1523 (2004); Junia Howell & Elizabeth Korver-Glenn, *Neighborhoods, Race, and the 21st-Century Housing Appraisal Industry*, 4 SOCIO. RACE & ETHNICITY 474 (2018); Sunwoong Kim, *Race and Home Price Appreciation in Urban Neighborhoods: Evidence from Milwaukee, Wisconsin*, REV. BLACK POL. ECON. 9 (2000).

100. On wealth, see MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL EQUALITY IN AMERICA (2d ed. 2006); THOMAS M. SHAPIRO, TOXIC INEQUALITY (2017); Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm [https://perma.cc/USG9-H5TS]; and Christine Percheski & Christina M. Gibson-Davis, *A Penny on the Dollar: Racial Inequalities in Wealth among Households with Children*, 6 SOCIUS 1 (2020). On the persistence of segregation, see Joe T. Darden, *Black Residential Segregation Since the Shelley v. Kraemer Decision*, 25 J. BLACK STUD. 680 (1995); and John R. Logan, *The Persistence of Segregation in the 21st Century Metropolis*, 12 CITY & COMMUNITY 160 (2013).

CONCLUSION

The importance of the restrictive covenant cases, as Richardson and the NAACP fully appreciated, lay in the fact that decent housing was the linchpin for economic security and mobility. As Melvin Oliver and Thomas Shapiro underscore, gaps in wealth, most of which is home equity, are a foundational or "sedimentary" inequality that cements other distributional and relational disparities—uneven access to credit, to good schools, to basic public goods and services—in place.[101] Persistent segregation, then and now, yields concentrations of poverty that dramatically undermine opportunity and mobility, leaving too many "stuck in place" or "truly disadvantaged."[102]

For these reasons, Richardson and the NAACP's goal was not so much to end the practice of private restriction (or at least state enforcement of same), but to unravel the tangle of prejudice and presumptions that motivated, animated, and rationalized them in the first place. This proved a steeper task. Although the restrictions themselves were unenforceable after *Shelley*, they were instrumental and effective in codifying, formalizing, normalizing, and sustaining the idea that black occupancy was a "nuisance" or "blight" that threatened property values. Narratives employed by realtors, developers, and neighborhood improvement associations not only justified exclusion on such grounds but then drew ironclad connections between the condition of the overcrowded spaces left behind and the race of their inhabitants.[103] These notions—about good neighborhoods and bad, about the threat of racial transition to property values—continue to shape the assumptions and anxieties of prospective homeowners or renters.[104]

"If the Court should follow up its action of declaring all local laws to segregate Negroes unconstitutional by declaring illegal also the private

101. OLIVER & SHAPIRO, *supra* note 100, at 5–7.

102. PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY (2013); Raj Chetty et al., *Race and Economic Opportunity in the United States: An Intergenerational Perspective*, 135 Q.J. ECON. 711 (2020); WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED (1987).

103. On the power of such narratives, see ELIZABETH ANDERSON, THE IMPERATIVE OF INTEGRATION 44–66 (2010); and CLARISSA RILE HAYWARD, HOW AMERICANS MAKE RACE 42–80 (2013). On their centrality to the worldview of local property interest and professional realty, see MARIA KRYSAN & KYLE CROWDER, CYCLE OF SEGREGATION (2017); HELPER, *supra* note 20; and GLOTZER, *supra* note 22.

104. KRYSAN & CROWDER, *supra* note 103.

restrictive covenants," Gunnar Myrdal argued hopefully in 1944, "segregation in the North would be nearly doomed."[105] He was wrong. In this respect, Richardson's occupancy of 4635 North Market and the NAACP's triumph in *Shelley* were similarly hollow victories. The covenant cases removed one mechanism of segregation, but the legal strategies of the 1940s both overestimated the singular importance of private restrictions and underestimated their durability—and the ease with which they would be adapted to other domains, emulated by other actors, and institutionalized by public policies.[106]

105. GUNNAR MYRDAL, AN AMERICAN DILEMMA 624 (1944).
106. ANDERSON, *supra* note 103, at 11–16.