RACIAL COVENANTS IN KANSAS CITY:

AN HISTORICAL VIEW OF THEIR EFFECT ON HOUSING CHOICE

By

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INTRODUCTION

The causes of racial segregation in northern cities have been the subject of great debate and endless study. Generally three broad theories dominate. One is that ethnic preference is the single most important force producing racial segregation (Gans, 1962). For example, people choose to live and associate with others with whom they can culturally and ethnically identify. A second theory, whose proponents do not necessarily discount the first theory, holds that racial segregation is principally the result of economics: the large number of dirt poor, unskilled blacks who migrated from the south were doomed to end up living in the most undesirable sections of our inner cities (Banfield, 1974:90). Moreover, their lack of income and salable skills made escape from ramshackle, crowded tenements virtually impossible. A third theory, which grew in popularity following WWII when the social sciences attracted greater attention, downplays the importance of ethnicity and income and suggests that minorities are instead the clear victims of racial discrimination (Myrdal, 1944), an element not considered in the other two theories.

Obviously each theory helps explain different aspects of segregation. Furthermore, a wealth of data has been accumulated to support each view. At any one time or place, the components of one theory may be more significant than another. Taken alone, however, no one theory can explain the pervasiveness of segregation that still exists today. The theories therefore overlap and feed upon each other.

The position of this theisis is that segregation in the beginning was largely voluntary, caused by both ethnic ties and economic necessity. Later on, however, as Myrdal wrote more than 35 years ago, "Practically all...Negro concentration is...forced segregation, independent of the factors which have brought it about" (1944:621). Racial discrimination has circumscribed black housing areas as has no other force.

This thesis looks at one form of racial discrimination, racially restrictive covenants and agreements that were used to exclude minorities (particularily blacks) from living in white residential areas. The focus will be on the Kansas City Metropolitan Region (KCMR). Racial covenants were enforced in Kansas City, as in most other northern cities, from approximately 1914 until they were ruled unlawful in 1948 by the U.S. Supreme Court in the landmark case, Shelley v. Kraemer (334 U.S.1). The interpretation of this decision caused considerable debate, however, and the observation of racial covenants continued for several more years.

Racial covenants established a pattern of segregation that profoundly influenced the housing choice of blacks living in Kansas City, the effect of which continues today. Without the common observance of these covenants, residential segregation would be far less pervasive today. Their widespread usage influenced the entire housing industry and helped to institutionalize segregated housing. Every phase of the housing industry was eventually covered by racial covenants: their presence was required for loans to developers and home

builders; realtors strictly observed them; government policy adhered to them; Title companies required them; and white residents accepted them as protection against future black residential movement and insurance against declining property values. By the late '30s, the racial covenant was routinely accepted as an integral part of any housing transaction.

Racial covenants not only determined where blacks could or could not live, they produced other lasting and profound effects as well:

- they provided white citizens with tacit legal approval to discriminate in housing; blacks who challenged the validity of the covenants were considered law breakers;
- as long as the covenants were ruled as valid agreements, they deprived blacks of their constitutional rights under the 14th Amendment.
- they perpetuated inferior housing conditions for blacks, who, growing in number, were confined to a limited territory;
- black demand for housing was so acute, and normal housing choice so limited, that blacks spilled over into bordering white neighborhoods, thus creating the phenomenon of transitional neighborhoods, white flight, and the block by block movement of blacks as the ghetto expanded;
- they prevented a significant percentage of today's black population from accumulating equity through home ownership;
- they perpetuated misunderstanding and animosity between the races;

Even though racial covenants were ruled unenforcible more than 30 years ago, their status remained uncertain for many more years. A series of court cases (the most recent of which was in 1972) and government actions all tried to accomplish what Shelley could not: end the influence of racial covenants.

METHODOLOGY

The research for this thesis includes a five month survey of racial covenants on file at the recorder of deeds offices in Jackson, Clay, Cass, and Platte Counties in Missouri, and Johnson and Wyandotte Counties in Kansas.[1] The process used to gather information was to review, as thoroughly as possible, each recorded plat, warranty deed, and declaration of restrictions from 1910 to 1954. A random survey was made of earlier and later years. (See Appendix A for a description of the review process.) Documents earlier than 1920 were generally in such a deteriorated condition that no thorough review of them was possible. Enough information was available, however, to conclude that very few restrictions were written before WWI and probably none before around 1914, the year in which the first ones were discovered in the survey. The last explicit racial restrictions in the KCMR were written in the late '60s in "exclusive" developments.

From the outset, the purpose of the survey was to determine, first, how extensively restrictions were written in the KCMR; and second, if complete coverage, or at least extensive coverage was necessary to effectively exclude blacks from white neighborhoods. In the beginning, the assumption was that they were "extensively written in the KCMR. This was based partly on a preliminary conversation with Robert Freilich, a professor of law at the University of Missouri at Kansas City and a well known land-use authority (Interview, 1977). Freilich, who has done research on exclusionary land-use practices in Kansas City, has examined racial restrictions in Kansas City (1971) and believed

that they did, indeed, "blanket" the metropolitan area.

In addition, a title examiner from the Chicago Title Company, who has extensive experience reviewing title deeds in Jackson County, estimated that about 95 percent of Kansas City, Missouri's subdivisions built prior to the early '50s had explicit racial restrictions (Dwyer interview, 1977). On the other hand, he said that only 35 to 50 percent of the eastern and southern Jackson County subdivisions contained such restrictions. The main reason for the difference is that areas outside of Kansas City, Missouri, prior to the early '50s, were largely rural and the threat of black neighbors remote.

What does it mean to say that the KCMR was "blanketed" with racial restrictions? Does it mean that every house in every white neighborhood was racially restricted? Does it mean that a substantial percentage of white homes were restricted? Or does it simply require that enough homes be restricted so as to effectively blanket white neighborhoods? Could the mere presence of a few racial covenants in white neighborhoods be enough to dissuade black homebuyers?

These questions were also considered along with the immense prospect of finding all of the restrictions. Given the large number of homes involved and the frequent turnover of homeowners from 1914 to 1954, the task was virtually impossible. Since restrictions often appeared each time a house changed hands, early thought of pinpointing the location of each restriction within a subdivision was quickly abandoned. After much consideration, the following assumption was therefore made: if but one restricted home was found within a subdivision, the

entire subdivision was considered restricted to black occupancy. The rationale for this assumption is discussed in greater detail in the section describing the results of the survey on page 107.

A second survey was made of the Kansas City Call newspaper, a black weekly published since 1917. Every issue was reviewed from 1923, the first year available on micro-film at the Kansas City, Missouri, Public Library, to 1954.[2] The Call provided the basis for many of the conclusions reached in this thesis. It is a remarkable history of black life, both in Kansas City and nationally (much of the Call's emphasis was on the latter after about 1933).

A third resource was a series of interviews with several long-time black residents of Kansas City. Although the purpose of these interviews concerned another closely related issue, they supplied added knowledge about life in Kansas City prior to 1954 when racial agreements were a serious concern to all blacks.

Fourth, a review was made of case law, particularly for Missouri and Kansas, relevant cases in other states, and the few key cases that reached the U.S. Supreme Court.

Lastly, a search was made of law journals, review, and other literature available on the subject of racial agreements.

DEFINITIONS

The generic term, restrictive covenant, covers all methods used to limit the sale or rental of property. A covenant is defined as "an agreement...or promise of two or more parties, by deed in writing... by which either of the parties pledges himself to the other that something...shall be done..." (Black's Law Dictionary). In common parlance it is "any agreement."

Although the language of racial covenants varied somewhat, its objective always remained the same: to make housing developments more attractive to whites by excluding other races. Three types of racial covenants were common: those that restricted the sale, lease, conveyance to, or ownership of property by any member of an excluded group; those that prohibited use or occupancy; and those that prohibited both ownership and occupancy (Scanlon, 1948: 160). The method most commonly used in Kansas City was the type prohibiting occupancy.

Typically, the language of restrictive covenants prohibiting race would state that

> no portion of said property...shall be conveyed by deed to any person other than a member of the caucasian race ...nor shall any person or persons not of the caucasian race occupy any portion of said premises, except for domestic servants (Jackson County Record Books, Book 3004, p.70).

Racial covenants always excluded blacks, but the language used to accomplish this purpose varied somewhat. Among the more common terms included were: "Negroes," "of African descent," "of Negro descent," "colored person," "Ethiopian race," and so forth. Some covenants specified a list of several minor-

ities including Negroes, Mexicans, Spanish-Americans, and Orientals. Others cited Jews. Still others contained restrictions barring Armenians, Hindus, Syrians, and "former residents of the Turkish Empire." Even Italians were barred on occasion. Yet another variant was the exclusion of "persons whose blood is not entirely of the white race," a rather nebulous, catch-all phrase. In short, racial covenants covered a spectrum as broad as predjudice itself.

Despite the differing language styles, disputes over racial definitions were infrequent concerning blacks because their identification was not usually difficult. Questions over who was a "Negro" or "colored" person were rarely ever challenged in the courts. Michigan, however, is one state that established the precedent that "land not sold to jews or persons of objectionable nationality" was too uncertain and vague for political action (Re Drumond Wren, 4 D.L.R. 674 (1945)). This argument was used in Sipes v. McGhee, a companion case heard jointly with Shelley, when McGhee argued, unsuccessfully, that the covenant language, except those of caucasion race," was also void due to its uncertainty (Voss, 1959:134).

Generally, however, all that was necessary to have a binding agreement was to make it clear that the desire was to exclude non-whites (Ibid. 7). The use of one of the other various terms did not need scientific verification when the intent was explicity to exclude "Negroes." Moreover, covenants against other minorities in Kansas City were not commonly written. The northeast section of Kansas City, Missouri, wrote covenants prohibiting Italian occupancy, but there is no indication that

they were ever actively enforced against anyone but blacks.

Racial covenants promised different, but similar, types of penalty for the violation of a covenant. Generally the signatories had "granted to all others an easement in his or her property;" a violation by one owner therefore gave the others a cause of action (Meade v. Dennistone, 173 Md. 295 (1938)).

REMEDIES TO ENFORCE COVENANTS

In the KCMR, every racial covenant law suit occurred in transitional neighborhoods in Kansas City, Missouri, where blacks were spilling over into white districts. The chances of a black moving to an outlying location were remote. Interestingly, law suits often did not include black litigants and it was common for suits to pit white against white. At other times, a white would file a suit against both the white seller and the black buyer. Neither blacks nor whites were pleased with the uneasy situation. Blacks wanted to move into restricted areas and could not; many whites wanted to sell to blacks so they could escape what they feared would ultimately be a black neighborhood. These circumstances led to cases that followed two forms: those where whites sought to get out from under the covenant by seeking an injunction that would decree a "cloud on the title;" and those where whites wanted to enforce the restrictions. Unfortunately, caught in the middle were blacks who only wanted the opportunity to improve their housing choice.

Getting out from under a restrictive agreement was difficult in that it required the approval of all of the other

signers of the covenant--an unlikely proposition. Moreover, the courts were hesitent to overturn a covenant, believing that they were "valid and solemn contracts and should not be lightly set aside" (Grady v. Garland, 89 Fed.2d 817, (1937)). To alleviate this fear, "escape clauses" were written into some agreements to assure white residents that if a black moved into a neighborhood and stayed for a specified period of time, the agreement was nullified (Voss, 1959:11). On other occasions, a restrictive agreement did not go into effect until certain specified conditions were satisfied, such as enough signatures to render the proposal a reasonably effective legal document (Ibid. 11).

Remedies were nonetheless occasionally granted. In one rather extreme example, the court cancelled the deeds, awarded court costs and attorney's fees to the plaintiff, and placed a lien on the lots involved (Lyons v. Wallen, 133 Pac.2d 555 (1942)). There are also several examples in the Jackson County record books where a group of white residents had racial restrictions on their property set aside, when the terms of the covenants expired, thus freeing them to sell to blacks.[3] While no law suits were involved here, occasionally white home owners petitioned the Jackson County Circuit Court to cancel their restrictions so they could sell to blacks and avoid law suits for doing so (KC Call, September 26, 1947).

The following are examples of the different types of remedy a plaintiff might seek in an attempt to have a racial covenant enforced.

Injunction - This was the most common and practical method

used in Kansas City to prevent the completion of a proposed sale to a black. A typical covenant of this type would state:

> In case of violation of any of the respective or collective restrictions the proprietor, his heirs, assigns, executors, administrators, or any subsequent owner of lots in this addition shall have the right or injunction and order mandatory or otherwise, to enforce compliance therewith (Wyandotte County Record Books, Book 951, p. 189).

Forfeiture - Another commonly used procedure was to seek an order forfeiting the sale of the property. Typical language would state that the "party of the second part cannot transfer above described premises to Negroes without forfeiture of agreement" (Ibid., Book 663, p.164).

Reversion - Closely related to forfeiture were covenants that guaranteed a reversion of property in case of a violation. In Missouri, this precedent was established in 1918 in Kohler v. Rowland when the Court held that violations of covenants "shall revert to the grantor or sellers (275 U.S. 323 (1926)). Typical language for reverter clauses would state:

> ...said land...shall not at any time...be sold, conveyed leased or the possession thereof in any manner delivered to a Negro or any persons whose ancestors are or were of African race, and in case the covenants at anytime be broken by them, then, by reason of said violations, all ...lands hereby conveyed shall immediately revert to and revest in the grantor herein, its successors and assigns (Wyandotte County Record Books, Book 609, p.547).

Damages - A less frequently used remedy was to sue for damages in order to punish the violators (Clark v. Vaughn, 131 Kan. 438 (1938)). This approach became popular after Shelley, however, when other remedies were rendered unlawful. The question of damages was not legally resolved until 1953 in the Barrows v. Jackson case (346 U.S. 249). As a result, during this five

year period, suits involving damages became quite common. They granted power to anyone owning property in the same development to sue for damages. Although the damages approach might appear the most practical remedy, prior to Shelley they were not commonly used because of the difficulty in measuring the damages. An example of a damages remedy is as follows:

> if the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein it shall be lawful for any other person or persons owning any real property situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation (Wyandotte County Record Books, Book 983:246).

CHAPTER 1 - EARLY HISTORY OF RACIAL DISCRIMINATION IN KANSAS CITY

THE SLAVERY ISSUE

It was through the institution of slavery that this country set the framework for future racial relations and the continuing pattern of racial segregation. Freedom and liberty for all were foremost on the minds of the continental congress, but their exalted ideals did not include blacks. Nor did the the abolitionist movement. Although abhoring the cruelty and dehumanization of slavery, as a rule, they did not want to extend full and equal rights to blacks (Rawley, 1969).

Slavery was first brought to Missouri in 1749 when Sieur Renault, a French trader, brought 500 pure-blooded Guinese Negroes to the territory (KC Star, September 29, 1970:14F). By 1803, there were between two and three thousand slaves located exclusively in the eastern and southern portions of the present state boundaries (Trexler, 1914:281). Population data

during this period is highly questionable, but Table 1 below, which was taken from both census records (started in 1860) and property tax records, shows a steady growth of slavery in Missouri.

Table 1 - GROWTH OF SLAVERY IN MISSOURI TERRITORY: 1810 - 1860

Year	Whites	Free Blacks	Slaves
1810	17,227	607	3,011
1820	54,903	376	9,797
1830	115,364	569	25,091
1840	322,295	1,478	57,891
1850	592,004	2,618	87,422
1860	1,063,489	3,572	114,931

(Ibid., 281)

Missouri was not well suited to "extensive" farming, such as cotton growing, which depended upon a large supply of laborers. Consequently, the number of slaves increased, but not as rapidly in proportion to whites. Most of the increase took place in the western counties along the Missouri river where hemp and tobacco were grown, crops well suited to slave labor. Nearly all labor in the state, however, was performed by slaves, but more for domestic than commercial purposes; only where hemp was grown were slaves employed as in the south (Ibid., 34).

The first blacks arrived in Kansas City in 1812 with the earliest white settlers when Francois Chouteau established a trading post within the present city boundaries (Webster, 1949: 7). Chouteau's use of slave labor for river boat work, then a principal means of transportation, caused early racial controversy. One reason for this controversy pertained to the fact that the river boats made escape for slaves much easier

and more tempting due to Missouri's precarious location, surrounded, as it was, on three sides by free territory. Owners were also bound by state law in Missouri to recapture lost slaves and were fined for the failure to do so (Trexler 1914: 30).

From the beginning, slavery was a major issue in Missouri. Pro-slavery agitation occurred principally in the western hemp growing counties along the Missouri river where the slave population was the largest. In 1860, the slave population of the western counties (Platte, Clay, Jackson, Ray, Lafayette, and Saline) was 23.5 percent of their total population and 13 percent for the entire state (KC Star, September 29, 1970:14F). The 1860 census shows that in Jackson County alone, where Kansas City is located, 3,316 slaves were divided among 736 slave owners, amounting to 4.5 slaves per land owner (Ibid.).

Pro-slave forces in Missouri hoped to extend slavery into Kansas, not only for profit motives and the extension of the South's economic and political base, but more importantly, to allow Missourians to protect existing slave property endangered by the presence of a free territory directly across their border (Rawley, 1979:80). Slave owners were bitter about the loss of slaves to Kansas, which by the late 1850s was considerable. Millions of dollars in slave property were lost (Trexler, 1914:32). This was so much of a problem that many owners around Kansas City started selling their slaves to southern owners (Ibid.,39).

In no other part of the country was the question of slavery debated more forcefully than along the Kansas and Missouri

border. When the New England Emigrant Aid Company was set up by New Englanders in the 1850s (to make profits from hotels, mills, etc., and only incidently to aid slaves to freedom (Ibid.,81)), pro-slave forces around Kansas City countered by forming numerous secret societies dedicated to the cause of preserving slavery (Nevins, 1947:309). Among the more active groups were those found in the cities of Westport and Independence, both noted hot-beds for pro-slavery agitation.

In his history of Kansas City, Theodore Brown writes that the City was in the midst of this conflict. Its border location presented its citizens with a dilemma. The people in power were pulled one way by their cultural ties to slavery and another by economic aims (1963:97). Most of the City's leaders (31 of 39) were slave holders and merchants from the South and slavery therefore represented a sizeable investment for them. Kansas City's businesses, however, were being bypassed for St. Joseph and Leavenworth due to continual threats of violence caused by the slavery dispute. Brown notes that these incidents, which were heavily publicized in newspapers back East, discouraged businessmen and traders from coming to Kansas City. As a result, future growth of the City, and the personal profits of its merchants, depended upon the ability of city leaders to stop the violence, protect property, and keep trade flowing through the city.

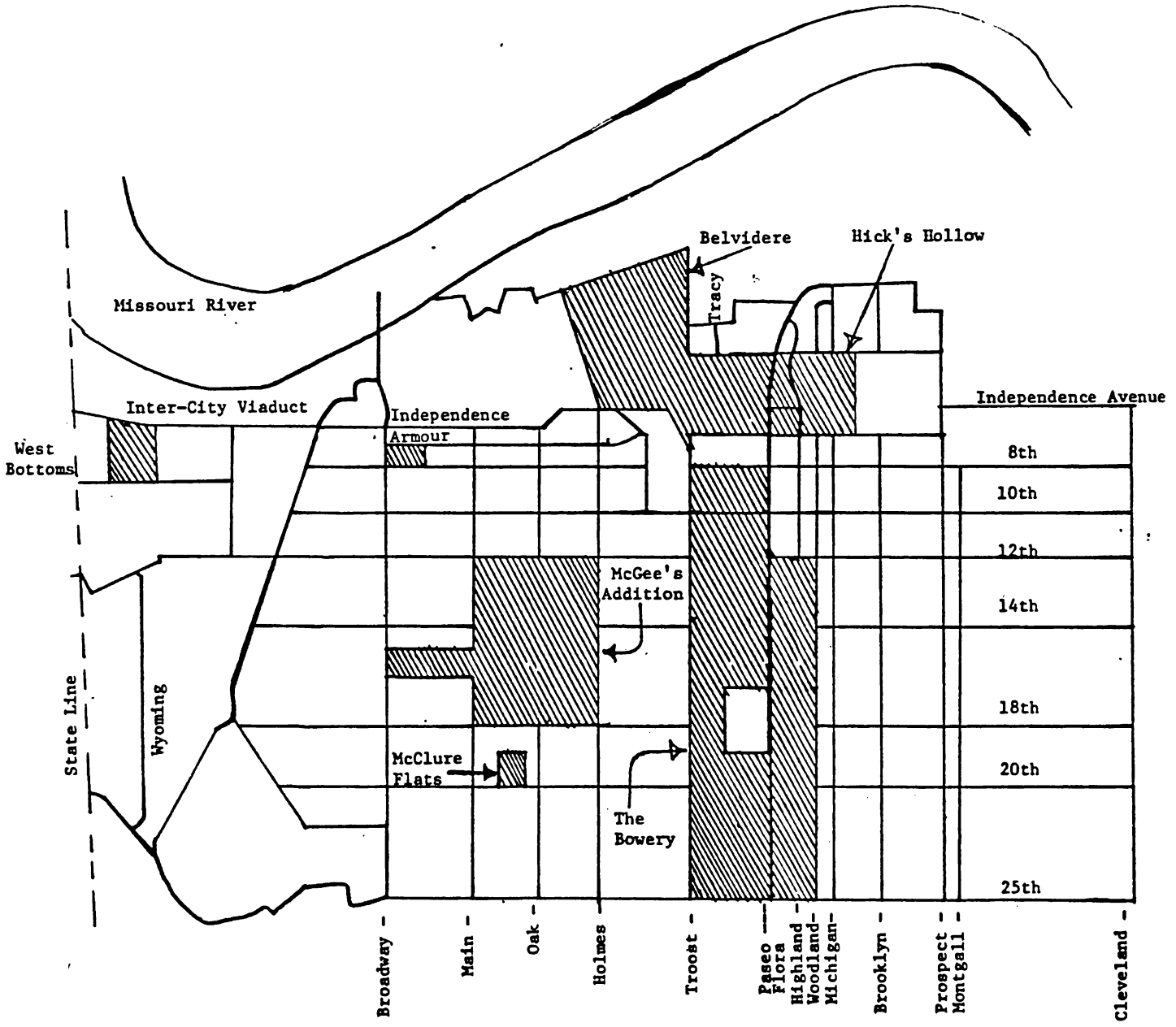
Rawley proposes that anti-slavery support in Kansas and Missouri took two general directions (1969). First, there were the "free soilers" in Kansas territory who wanted to write the exclusion of slavery into the proposed state constitution,

thereby prohibiting the plantation system which was considered alien to their way of farming and living. As such, their motive had little to do with the welfare of blacks. On the other hand, there was a strong abolitionist movement derived from religious groups in the northeast who had come to settle in Kansas. They believed slavery was unjust and their goal was to aid both runaway and freed-slaves by transporting them into the state, hoping they could establish communities of their own. As with earlier abolitionists, however, Rawley believes there was no intention of bringing blacks into the mainstream of white society. Their efforts, including an underground railway running from Nebraska into Lawrence, led to countless raids by Missourians to recapture slaves. "Jayhawks" countered by carrying out guerrilla warfare against Missouri farms that held slaves. The period became popularly known as "bloody-Kansas."

BLACK RESIDENTIAL MOVEMENT

After the Civil War, approximately 1500 freed blacks, mostly from Missouri territory, came to Kansas City and settled along Charlotte and Campbell streets between 10th and 11th streets. Another pocket located around 6th and May and 8th and Central, but within a few short years, businesses pushed this second location eastward to the first one (KC Call, November 21, 1930). (See Figure 1.) This area was referred to as "East Kansas," and it ran roughly from Holmes on the west, to Woodland on the east, and from the river on the north to a varying line along 5th and 10th streets on the south (Martin, 1913:90).

FIGURE 1--BLACK LOCATION IN KANSAS CITY, MISSOURI: 1865 - 1900



By 1875, many blacks were also living in the "West Bottoms," the present location of the American Royal and much industrial activity, where they found work in packing plants after white employees went on strike at the Armour Company. By the 1880s and '90s, however, most of this land was taken up by industrial expansion and a sizeable black movement out of this location began (KC Call, July 26, 1928). Some blacks moved to the East Kansas neighborhoods and others went southward along State Line Avenue (where Rosedale is presently located). The principal movement, however, was eastward between Troost and Woodland where the main black section, the "Bowery" was rapidly forming (Brown and Dorsett, 1978:96).

In the 1870s, other blacks lived just south of Westport Road (where St. Luke's Hospital now stands), near 53rd and Agnes, and 58th and Montgall (Martin, 1913:92). Many blacks were living along Paseo from 12th to 17th street in 1880, but whites bought them out due to the location's beauty (KC Call, July 26, 1928). (Perhaps the only instance, until recently, where whites wanted to buy property from blacks.) A few years later, the same property would revert back to blacks, as whites were anxious to move farther south to escape the growing black community.

East Kansas was comprised of two crowded pockets: Belvidere and Hick's Hollow. By 1910, Belvidere was generally bordered by Holmes on the west to Tracy on the east, and from First Street on the north to 5th and 8th Streets on the south. Hick's Hollow, straight east of Belvidere , was roughly bordered by Vine on the west and Prospect on the east, and from First to Inde-

pendence Avenue (Martin, 1913:90).

These two pockets became known as Kansas City's first "problem" neighborhoods. The residences were made up exclusively of worthless dilapidated tenements, built originally for white occupancy, that the City would not condemn and their white landlords could not afford to repair (Ibid.). Over 1,000 blacks lived here by 1900 (Ibid.). Ward data indicates that its population peaked sometime between 1900 and 1920, when it reached more than 4,000. Many blacks then started moving south to the Bowery.

Only rough estimates can be made from the ward data because, as political boundaries, they change regularly. Nevertheless, Kansas City, Missouri, ward boundaries in 1900 and 1920 are closely aligned and the pattern of eastern and southern movement is verifiable. For example, 30 percent (5,179) of all blacks lived west of Oak Street in 1900; only 13 percent (4,004) lived in this area by 1920 (U.S. Census). Black movement had definitely turned eastward, more than doubling in the Bowery. The primary reason for the movement was the rapid post war commercial and industrial growth occurring in and around downtown Kansas City, Missouri. Similarly, in 1900, nine percent (1,665) of the black population lived south of 20th Street, but in 1920 it had increased to 25 percent (7,541) (Ibid.).

As a result, by around 1920, the Bowery had become the largest black location in the KCMR. During the '20s, the Bowery extended from Admiral Boulevard (just south of Independence Avenue) southward to a varying line from 18th to 25th

Streets, generally bordered by Troost on the west and Paseo on the east (Comstock, 1936:2). Ward data for 1920 shows that approximately 60 to 70 percent of the black population in Kansas City, Missouri, lived in this general section at this time. Like Belvidere and Hick's Hollow, the Bowery was largely made up of apartments, most of which had been built for whites. When the white landlords could not fill many of them with white occupants (most were less than half full), they increased the rents and opened them up to blacks who anxiously moved in. So much so that terribly crowded and unsanitary conditions resulted (Martin, 1913:90).

Before 1900, most of Kansas City, Missouri's middle class, including many blacks, lived in McGee's Addition (Brown and Dorsett, 1978:45). (See Fig. 1) Neither rich nor poor lived here. Development of the subdivision began near the present location of the public library and County Court House at 12th and McGee. It ultimately was bounded by Main, Holmes, 12th and 18th Streets (Tuttle, Woodward and Ayers, 1923:plats 14-15). The southern expansion of McGee's was halted by McClure Flats, a terrible slum that consisted of two solid block like buildings running up and down Grand and Mc Gee from 19th to 20th. At the time, there were no ordinances requiring set-backs or open space and McClure Flats occupied 80 percent of the ground area (Board of Public Welfare, KCMO., 1912:42). Living quarters were on one side of the street and shops on the other. McGee's Addition eventually deteriorated to the same slum-like conditions as McClure's Place (Brown-Dorsett, 1978:45).

Asa Martin's survey of 1913 found that the 22 blacks making up the heart of the Bowery were occupied by 4,295 people (90).

The same survey showed that less than one-half of Kansas City's blacks had water, and less than one-fourth had toilets. Privies sat right next to tenements and were usually shared by several families; the most notable instance being 19 families for one privy (Ibid.,43).

Shortly after the turn of the Century, cities across the country were making surveys that documented the disgraceful housing conditions found in urban centers. Perhaps this was in response to Lewis Hines's influential "slum" photography which enlightened the public, as never before, to the need for some type of housing program. Kansas City carried out such a survey and published its findings in 1912 (Ibid.). No racial distinctions were made and the Hines-like photographs (a most impressive aspect of the study) show many poor white slum areas as well as black.

Asa Martin's survey, also in 1913, showed that of the 40,000 property owners in Kansas City, only 800 were blacks (30). Most importantly, Martin points out that areas where blacks were allowed to own property was significantly smaller than the areas in which they were permitted to live (Ibid.,34). Therefore, blacks were not only restricted in a geographical sense, they were also confined to rental properties because single family residences were not open to them. Martin indicates that the homeowning district for blacks before WWI was located between Lydia, Kansas Avenue, 12th and 27th, but not continuously. He provides the following streets and number of homeowners on each.

Table 2 - STREETS IN KANSAS CITY, MISSOURI, WHERE BLACKS OWNED HOMES: 1913

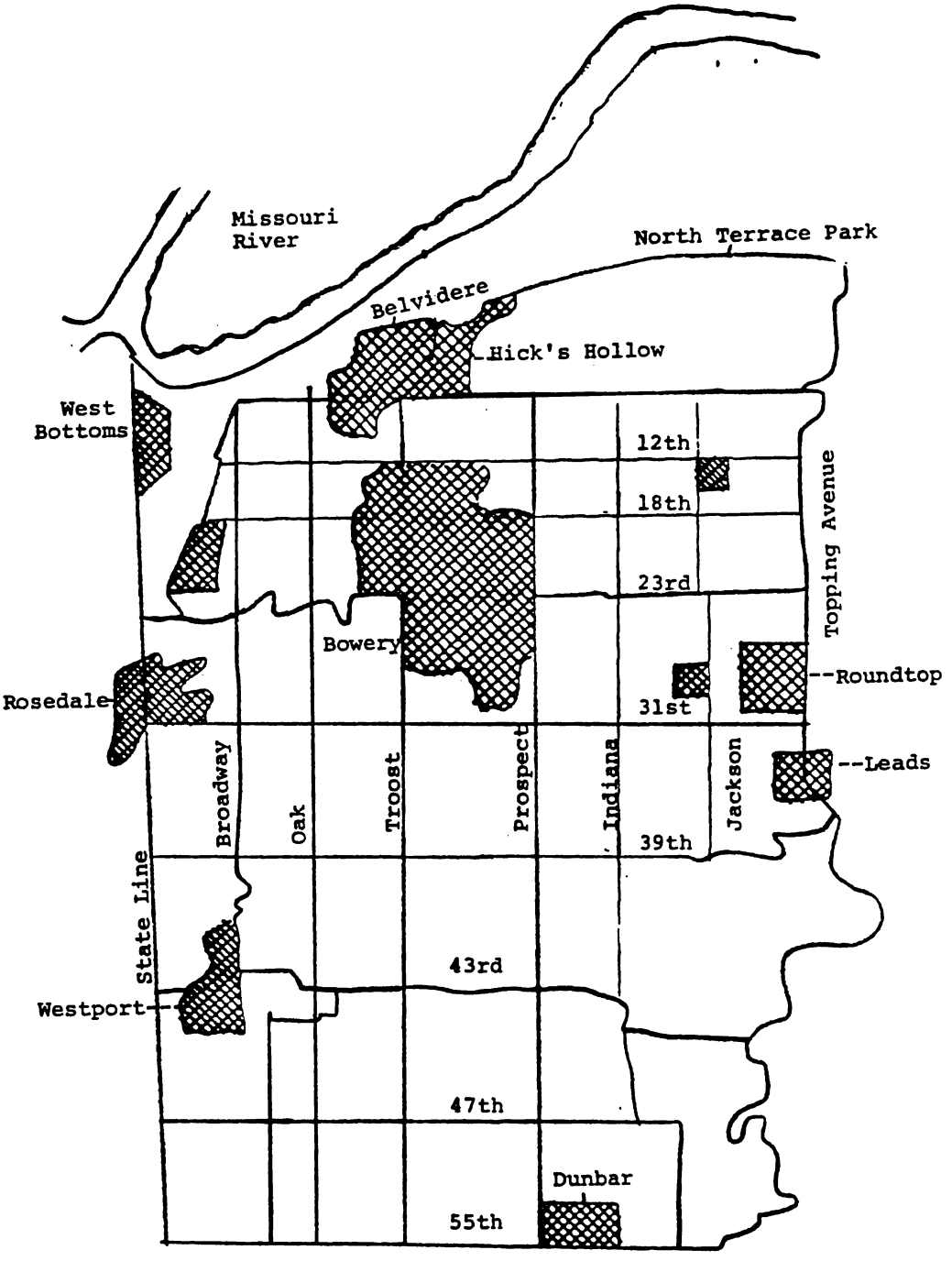
Street	Between	Number of Homes
Highland	12th to 27th	104
Woodland	12th to 14th	12
Woodland	24th to 27th	27
Flora	23rd to 25th	37
Vine	12th to 15th	15
Michigan	24th to 26th	35
Cottage	Flora & Woodland	18
Howard	Vine & Woodland	7

These streets generally cut through portions of the Bowery, but blacks were also able to live in single family housing in Westport and the Dunbar Addition to the south.

In addition to the Bowery, Hick's Hollow, and Belvidere, Kansas City, Missouri, had several other small black locations at the turn of the century. These are illustrated in Figure 2 on the following page. The largest was in Westport where approximately 600 blacks lived just south of the present Westport Square location. Several hundred families also lived in the following locations: Roundtop subdivision on 28th and 29th (just south of the present I-70); the Leads district at 35th and Topping (near the Leeds Industrial District); the Dunbar subdivision between 53rd and 54th on Prospect, Montgall, Benton, and Agnes; the area around State Line and 31st Street extending into Rosedale, Kansas. Finally, several families remained in the West Bottoms, near the Coates Hotel west of Broadway, and from 28th to 29th on Summit.[4]

The Westport location has an interesting history. Two prominent Kansas Citians, Ward and Wornall (for whom main thoroughfares are named after) were opposed to slavery and

FIGURE 2 - LOCATION OF BLACK POPULATION IN KANSAS CITY, MISSOURI, APPROXIMATELY 1940



therefore operated an underground railway before the Civil War to help slaves escape. The property they owned included the land running from Westport Avenue southward to 46th Street, and from Pennsylvania Avenue westward to Summit Street. When the war was over they deeded some of this land to a group of former slaves. When blacks began occupying property in this section it was mostly isolated from Kansas City, still to the north. Later, however, when Kansas City began rapidly growing southward toward this location, many prominent white businessmen, feeling that the "Negro" district lowered surrounding property values, frequently made offers to buy out all of the property occupied by blacks. In one instance, an offer was made to physically move their homes out of Westport to another location where blacks were living and, in addition, offered them two lots for their one (Comstock, 1936:1). These offers were always turned down. Blacks in Westport gave the impression of middle class prosperity compared to the main black section, the Bowery (Ibid.). Unfortunately, most of them were finally forced out when St. Luke's Hospital was constructed in the 1950s and several other industrial development proposals were planned, none of which was ever built (Fields interview, 1978). Today, only a handful of their descendants remain living in their original homes.

The Dunbar addition at 54th and Prospect is another example of an isolated black area that caused concern to whites who eventually moved into housing that surrounded Dunbar. Dunbar was formed in 1905 beyond the city limits (KC Call, October 10, 1924). By the '20s, white expansion was pressing

at Dunbar's boundaries. In 1924, led by improvement associations, whites proposed to have the Park Board buy up ten blocks of homes occupied by blacks (Ibid.). The Park Board refused, reluctant to get involved in what they considered "property rights," not to mention their hesitency to purchase already occupied land and convert it into a park when there was already an abundance of vacant land available for that purpose (Ibid.).

The same tactics were used in 1927 when the East Betterment League sought to have the Park Board relocate blacks living in the Roundtop subdivision, where blacks had lived since the 1890s (KC Call, October 16, 1927). Again, the Park Board refused. Four years earlier, the Greenwood Improvement Association had formed to isolate Roundtop by enclosing it with a "dead wall" (KC Call, October 19, 1923); in other words, establishing a zone around Roundtop that would allow whites to live separately from blacks. Other methods were also used, such as allowing the building inspector the right to refuse building permits to blacks in white neighborhoods; this resulted in a mandamus suit by blacks against the City (Ibid.). The Court failed to ever review it, however, which allowed enough time to pass for the Park Board to purchase the property in question under the suit and turn it into a playground (Ibid.).

There are also similar cases involving isolated single families. For instance, the Jackson family lived in a home at 20 south Cherokee Street in Rosedale, Kansas, for 38 years when whites in 1928 had moved in around them. Neighbors

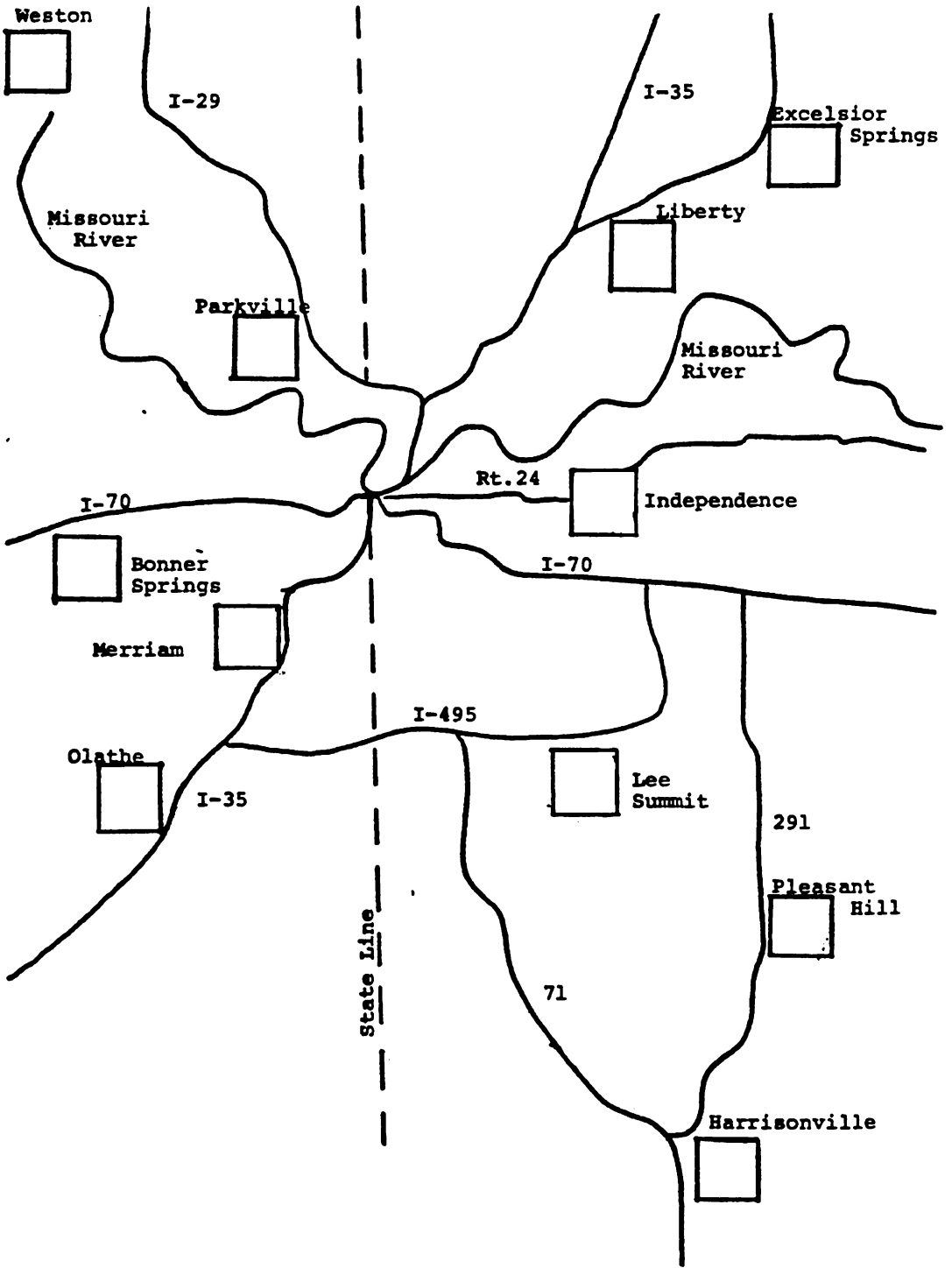
stoned their house, built fences around the yard, dug trenches so water would drain into their yard, and broke into their house six times, once posing as officers demanding that the Jacksons leave; calls to the police went unanswered because the general feeling was that the Jacksons were wrongdoers, not the neighbors (KC Call, July 20, 1928).

By 1900, blacks were also living in several outlying areas away from the two largest concentrations in the two Kansas Cities. One of the most noteworthy was in Independence, where a fairly large black population had lived before the Civil War. In 1860, their total population was 3,164 with 700 blacks; by 1970, the total had risen to nearly 120,000 while the number of blacks had declined slightly (due to urban renewal) to 621. Liberty, Olathe, and Merriam were also settled just prior to the 20th Century. Their black populations had all reached several hundred by 1930 and remained stable up to 1970. Table V shows the black population levels of these communities, along with several other smaller ones. Figure 3 on the next page shows their locations relative to Kansas City, Missouri, and Kansas, where about 75 percent of the black population lived in 1930; by 1950, it had grown to 93 percent.

TABLE 3 - BLACK POPULATION IN OUTLYING AREAS OF THE KCMR

	1920	1930	1940	1950	1960	1970
Independence	864	846	749	779	713	621
Liberty	421	496	432	407	387	404
Olathe		269	235	315	395	479
Merriam		102	187	166	159	155
Lee Summit			29	23	17	16
Pleasant Hill		145	87	75	53	19
Excelsior Spgs.	308	274	280	278	256	470
Parkville				75	120	144
Weston				53	8	7
Bonner Spgs.		174	205	268	268	245

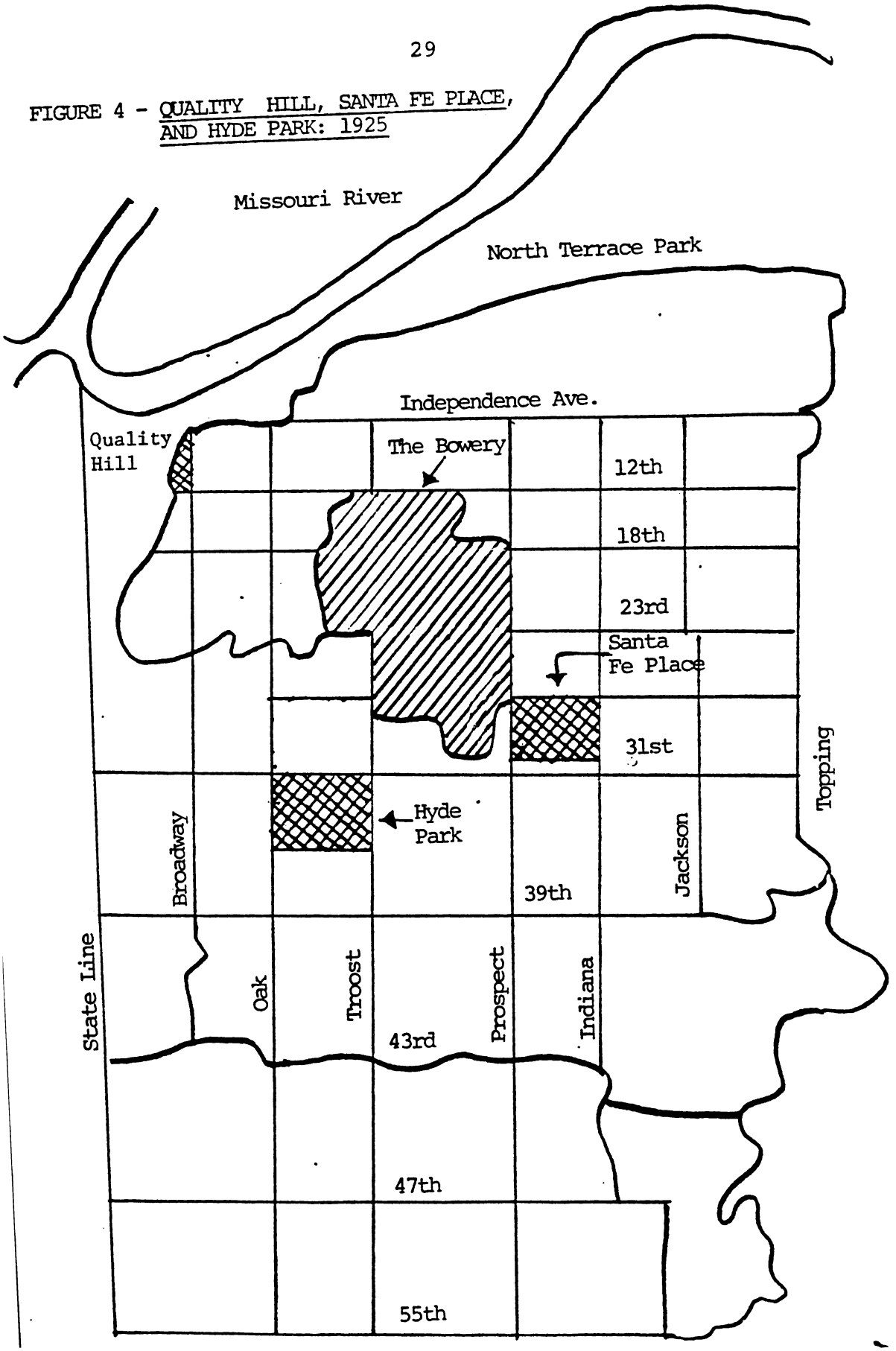
FIGURE 3 - LOCATION OF SMALL BLACK SETTLEMENTS IN OUTLYING AREAS OF THE KCMR



Up until around 1890, Quality HIll was the prestige location for whites in Kansas City, Missouri. Built in 1865, and presently being considered for a redevelopment project under the National Historical Preservation Act, it is roughly located west of Washington Street to the Bluffs overlooking the stockyards, and from 8th to 11th (see fig.4). The once magnificent one-family mansions were rapidly transformed in a 15 year period to apartments housing seven and eight families (Board of Public Welfare, KCMO., 1912:44).

Another prestige location that attracted many Quality Hill residents was Santa Fe Place, which was bounded by 27th, 30th, Prospect, and Indiana; still others moved to Hyde Park bounded by 36th, 39th, Gilliam Boulevard, and Harrison (see fig. 4). Santa Fe Place flourished in the '20s when most of the City's powerful lived there (KC Star, December 8, 1978). While the prosperity of Hyde Park continued through the '50s, and is today enjoying a back to the city renaissance, Santa Fe Place gradually began to decline by the '30s. Jewel Freeman (Neal), a long-time resident who has written about the neighborhood gives two reasons for the decline (1956). First J.C. Nichols began to build the Country Club district south of 47th Street in 1925 and this attracted the City's wealthy families, many from Santa Fe Place. Second, with the "Great Crash" of 1929, many families began to allow their magnificent homes to deteriorate. Additionally, blacks were rarely able to penetrate the formidable Troost boundry protecting Hyde Park, but they were increasingly buying homes closer to Santa Fe Place which had fewer "nice" neighborhoods surrounding it.

FIGURE 4 - QUALITY HILL, SANTA FE PLACE, AND HYDE PARK: 1925



Before the '30s, the possibility of blacks moving into Santa Fe Place was not considered due to the expensive and exclusive character of the area. By 1931, however, most of the wealthy whites were leaving and only the middle class remained. Fearful of black intrusion, they decided to impose 30 year racial covenants on their property (Ibid.). The power of this act is illustrated by the fact that no black was able to live within Santa Fe Place until the Shelley decision in 1948 overturned the covenants, even though blacks were living on nearly all sides of the neighborhood by the 1940s. In the 1950s, Santa Fe Place became the home of many upper-class blacks and many of them remain there today.

LIFE FOR BLACKS IN KANSAS CITY BEFORE 1900

Despite the high level of racial hostility in and around Kansas City during these years, there is evidence to suggest that there was a period when racial relations were relatively good in the City. Moreover, segregation was, surprisingly, much more prounounced in the 20th Century than it was in the 1870s. In 1875, for example, blacks lived in most of Kansas City's neighborhoods on an integrated basis (Brown and Dorsett, 1978:47; and KC Call, July 27, 1928). The few middle class blacks that lived in Kansas City were not restricted to slum housing, as even the upper class and professional blacks were in the years before 1950. In the slum of "East Kansas," described earlier, blacks were more or less integrated by "the pressures of grinding misery," with Irish, Italians, and native whites; all were crowded together (Ibid.). The Kansas City Call wrote that many blacks and an equal number of whites

lived with no hint of segregation or prejudice in Belvidere and Hick's Hollow, "side by side in rough shacks." Residents here fought frequently, the Call says, but race did not play as important a part in the disputes as the tough environment of the neighborhood. In the West Bottoms, the same integrated conditions prevailed. By 1880, the Call states that there was still no definite plan for segregating the housing of blacks and whites; "folks were too busy trying to live to think of racial differences...Negroes lived in houses scattered all over the city" (Ibid.). Gunnar Myrdal argues, however, that "generally it is true both in the South and in the North that segregation as a factor in concentrating the Negro population is a pattern that is most characteristic of higher class areas and is much weaker or totally absent in slum areas (1944:620).

Perhaps the lack of segregation during this period is not as widespread as the Call maintains, even among the lower income classes, but it nevertheless appears that no systematic effort was made to separate the races in Kansas City before around 1880. At least until this time the black population was growing more out of choice than dictate (KC Call, November 21, 1930). One possible reason for the relatively peaceful racial atmosphere was the passage of the 13th, 14th, and 15th Amendments, and a series of civil rights acts passed between 1870 and 1875. They gave blacks everywhere new found freedoms that they would not enjoy again until at least the mid 1960s. For instance, many restaurants , and most saloons, were open to blacks; theatres were segregated, but equally so; drug stores served blacks without protest; the Coates House,

Kansas City's most prestigious hotel, admitted blacks equally; black women, who could afford them, were fitted with dresses with the same courtesy as whites; the city's first park at 18th and Holmes was opened to everyone, as was the City's second park, Spring Valley, at 18th and Troost.[5] Intermarriage was also common due to the relatively free contact between the races (Brown & Dorsett, 1978:46).

These conditions were nevertheless short lived and a series of events seemed to influence a change toward increased separation. First, Brown and Dorsett maintain that the newly found freedoms of blacks were resented by many whites who found it difficult to accept blacks on an "equal" basis (Ibid.). Whites apparently felt that the civil rights legislation went too far and posed a threat to their long held belief in white superiority. The Call notes in Kansas City that the Civil Rights Act of 1875, which granted black access to public accommodations, was negatively received by nearly every business that served the white public, principally because their white customers demanded not to be served along with blacks (November 21, 1930). The Act persuaded the city's two most popular and prestigious hotels, the Coates House and the Phillips, to alter their policies: the Coates House began to exlude blacks entirely, while the Phillips, though continuing to accept blacks, said they would receive less than the best accommodations, with service at a high price (Brown & Dorsett, 1978:47). Thus the pattern was set. By the turn of the century, all of Kansas City's hotels that patronized whites excluded black clientele entirely. Even blacks making deliveries to hotels

were now told to use back doors and freight elevators so white patrons would not be offended (KC Call, September 25, 1931). Theaters and restaurants followed suit and blacks were forced to open their own theaters and eat in their own restaurants. Department stores served blacks, but would not allow them to try on clothing (KC Call, Weptember 14, 1928 and May 30, 1930). Miscegenation laws were now strictly enforced with stiff $500 fines; enforcement frequently resulted in mistaken racial identity because many blacks with lighter skin were identified as whites (KC Call, January 22, 1926).[6]

In essence, most businesses in Kansas City that served whites came to accept the belief that it was bad business to give blacks the same consideration as whites. Therefore, they were either excluded entirely or segregated and given the worst seats and service. Once one hotel, restaurant, drug store, etc., started to adopt such policies, everyone else was inclined to do likewise for the fear of losing customers (Swinton interview, 1978). As a result, segregation and discrimination in public accomodations continued in Kansas City until the City narrowly passed an ordinance prohibiting it in 1963. Miscegenation laws remained on the books in Missouri until they were repealed in 1968.

A second factor which altered white attitudes toward blacks was the great "Negro exodus" of 1879 and 1880. Blacks by the thousands from Louisiana, Mississippi, and Tennessee were lured to Kansas by false promises of free land, mules, and government aid) Painter, 1976). The migration was brief

but its impact was significant. Within a few days, thousands of blacks had arrived by steamboat at Quindaro landing in Kansas City, Kansas. White Kansas Citians who observed the boats coming up the Missouri river were alarmed. They feared that all the blacks in the south were coming to Kansas City, a much heard rumor from people downriver (Ibid.). Many of them did settle in the town of Wyandotte near what is now the west end of the inter-city viaduct in Kansas City, Kansas, just east of 3rd and north of Everett Avenue. Their settlement, called "Juniper Village," later became a Kansas City, Kansas, ghetto. Although many others were able to move westward to "Tennessee Town," in Topeka, to Niccodemus and several other small Kansas towns, the growth of the black population in Kansas City, Kansas, can easily be seen from the following data.

Table 4 - TOTAL BLACK POPULATION IN KANSAS CITY, KANSAS: 1860-1880 (U.S. Census).

1860	1870	1880
625	17,108	43,107

The large influx of population was not, however, restricted to blacks. In 1860, 108,000 people lived in the entire state of Kansas. By 1890, despite the state's harsh climate, more than 1,400,000 people had come to the state. The migration of whites ended as quickly as it had for blacks.

Kansas City, Missouri, was not unaffected by the large migration of blacks during this short period. The City's population increased significantly from 1860 to 1890, as indicated in Table 5 on the next page.

Table 5 - BLACK POPULATION, KANSAS CITY, MISSOURI: 1860 - 1890.

	Total Population	Black Population
1860	4,418	190
1870	32,260	3,764
1880	55,785	8,146
1890	132,716	13,700

(City Development Department, KCMO., 1969:7)

The Kansas City Star also gives an indication of the changing attitudes toward blacks in Kansas City. When it was founded in 1880, the young and liberal paper was praised by blacks as the "...only paper that has recognized our claim of impartial justice, equality before the law or sympathy attendant upon our common humanity" (KC Star, October 29, 1970:15). At the time, editorials were written about the terrible hardships faced by blacks and sympathized with their plight. By 1885, however, their mood had changed to one of protecting white interests and criticizing blacks for demanding too much freedom (Ibid.).

Despite the large number of incoming blacks coming to Kansas in 1879, the southern migration to most northern cities following the emancipation was slow. This was especially true in Kansas City. In 1860, 90 percent of the blacks in the country lived in the south; 40 years later, 90 percent still lived there (Taueber, 1965:11). Several events rapidly altered this situation: first, the boll weevil devastated the South's cotton crop limiting social and economic opportunities; second, the North, expanding its industrial production in response to the war effort, opened up thousands of jobs; third, restrictions on European migration following WWI opened up still further job oppor-

tunities to blacks (Ibid.).

An important fourth factor was the increasing racial violence in the South, mostly from resentful poor whites who had always felt that blacks, even as slaves, were better off than they were. During the last quarter of the 19th Century, 3,284 blacks were lynched, almost exclusively in the South (Barne, 1909:174). According to the Tuskegee Institute, 1,217 lynchings occurred between 1890 and 1900; from 1900 to 1908, there were another 857 (Aptheker, 1951:792). From 1900 to 1930, when the number nationwide was declining significantly, there were 41 lynchings in Missouri, including two each in Platte and Clay Counties; during the same period, Kansas had nine (KC Star, September 29, 1970:15). Rarely were those responsible successfully prosecuted. The last lynching in Missouri occurred in Sikeston in 1942 (Ibid.).

While the violence in the South was ignited by severe economic probems, in the North, the more the black population swelled, the more whites perceived them as a threat. Kluger notes that during the first 15 years of the 20th Century there was an outpouring of racism and violence in many northern cities that had never before flourished (1976:84-88). Everywhere, there was a breakdown of restraint. Institutions gave their tacit approval to racism: the Supreme Court, the media, in education, in public life, in everything (Ibid.).

The outpouring of white hatred in response to the northern migration was met by the country's first bloody riots in the "red-summer" of 1919. Several northern cities, including Chicago, Philadelphia, Detroit, and St. Louis, experienced riots.

In St. Louis, thousands of blacks were routed from their homes, clubbed, stabbed, and even hung, in rioting that was triggered due to the hiring of blacks by a factory with government contracts. One report listed 40 dead, while the NAACP tallyed 200 (Ibid.,110).

Although no riots of this magnitude occurred in Kansas City, news of them undoubtedly left a lasting impression on blacks and whites alike. The City was able to escape much of the violence, perhaps because they did not experience as great a rush of incoming blacks as did the other northern cities like Detroit and Chicago. With the exception of the few months in 1879, their growth was later in coming, slower, and steadier in comparison. Nor did defense industries hire black workers in Kansas City until WWII (Urban League, 1940). Furthermore, blacks in Kansas City did not appear to resist white racism so strongly as did other cities. Indeed, the black history of the City appears devoid of the militancy found elsewhere. Instead, black leaders stressed accomodation or "getting along." In the face of growing segregation and discrimination, they fought only for the "separate but equal" doctrine. Only when it was clear that the doctrine really meant "separate but unequal" would Kansas City's blacks demand greater access to white institutions. Similarly, only when whites became aware that laws requiring separate but equal facilities were economically unfeasible did they begin to reluctantly change the law.

HOUSING CONDITIONS IN KANSAS CITY: 1920 - 1950

In cities throughout the country, the primary economic effect of racial agreements was to limit the amount of housing in which blacks were able to live (Weaver, 1948:234). Racial agreements in Kansas City produced an extreme shortage of available housing for blacks prior to 1950. For example, from 1925 to 1940, less than 15 new homes were built for blacks in Kansas City, Missouri (Webster, 1948:47). Only 200 new homes were built for black occupancy from 1940 to 1950 (KC Star, Webster, October 14, 1952:18). During the same period, while the black population had increased by 34 percent, there was only an increase of 22 percent in the number of dwelling units they occupied (Ibid.).

The widespread usage and common knowledge of the existence of racial agreements are principal reasons why blacks were confined to the older, deteriorated housing in small, designated sections of the city. Whites were determined to keep blacks from moving outside of the black district. Racial covenants helped accomplish this as they provided an explicit and legal approval of housing segregation. Thomas Webster, the former executive director of the Urban League in Kansas City for nearly 25 years, and long considered one of the city's most knowledgeable sources of housing information during the years when racial covenants were widely used, wrote to a city councilman in 1946 that "there is little area for expansion of the increased Negro population because of the use of racial restrictive covenants" (1949:146).

An editorial in the Kansas City Call describes the situation this way: "Kansas City...expects Negro citizens to remain fixed while all others move...Negroes must have somewhere to live ...Neither its humanity nor its common sense makes Kansas City see that it must concede us homes somewhere" (August 16, 1927). Without access to new housing, or even existing housing, blacks were limited to neighborhoods where the black population already lived, or to the old deteriorated housing stock left behind by whites moving up the housing ladder to more desirable suburban locations.

In 1940, 85 percent of the housing inhabited by blacks was also considered in need of "redevelopment and rehabilitation" (Webster, 1948:23). By 1946, one study showed that 48 percent of Kansas City, Missouri's housing stock was in need of rehabilitation; 10 percent of it was occupied by blacks, yet they also totaled 10 percent of the population (City Development Department, KCMO., 1969:21).

Further compounding the problem was the lack of vacant land on which to build additional housing within black areas (KC Call, 1938). Existing units were simply converted or divided for additional accommodations (City Development Department, KCMO., 1969:28). Also contributing to the crowding and poor housing conditions was the long established practice by white landlords of razing their buildings to avoid paying taxes and building no new dwellings to replace the old ones (KC Call, August 1, 1924). Fires in crowded worn out buildings inhabited by blacks were common place and disease rampant. For example, in 1923, 53 people died as a direct result of diseases stemming from

crowded conditions (KC Call, September 19, 1923). As a token gesture to help alleviate the crowding, the city built a small number of barracks like boxes for black housing, with few accommodations.

In 1940, 85 percent of the black occupied units were also rental housing, most of which was owned by white landlords (U.S. Census:880-883). The pattern of rental housing as the principal type of occupancy for blacks still persists today.

Blacks often got caught between slum lords who were anxious to rent to blacks, and whites who did not want them as neighbors. The Kansas City Call, for instance, reported in 1925 that while a large group of whites were demonstrating to have blacks removed from some apartments at 7th and Woodland, the owner of the apartments said he would continue renting to blacks because the property was rundown and he did not want to repair any of the units; he claimed the apartments were "fit for the occupancy only of Negroes" (August 14, 1925). He was well aware that whites would never live there, and because there were no building or housing codes to force him to make repairs, he was anxious to rent to blacks. Many blacks, who were attracted to his apartments by promises of free rent for the first month of occupancy, later moved out when handbills were circulated stating: "Notice to landlord, agent, and occupants. Colored tenants will not be tolerated in Garland Place" (Ibid.).

An editorial in the Kansas City Call in 1931 lucidly describes the pitiful state of black housing in Kansas City:

> In a prominent block on 18th street, one of the sections of Kansas City where Negroes constitute the population, a recent development in business caused the removal of

> some shacks which had stood for years. Next to them was one, as bad if not worse than those removed. At the completion of the improvement, this aged structure, staggering back from the street, and blackened with the smoke of many fires that had ravaged it, was given a covering of secondhand tin. It is now ready to carry on a few generations more.
>
> This bit of life tells the story of Negro housing. Our early years in Kansas City were spent in shacks. Until the inner urge got to the point where we faced opposition, even midnight bombs, we lived in shacks. To this day we are still in shacks wherever landlords are mercenary enough to offer old ruins for rent. Shacks are a crime against health which the city permits--an inexcusable failure to apply good common sense. What's the use of spending the public money to repair human damages through hospitals, charity funds and prisons, when the evil can be cut off at the source by putting into effect a building code that makes the landlord provide a decent house before he can invite its use.

Because crowding was so severe and the supply of available housing so limited, blacks were also forced to pay inflated prices for inferior housing. In Kansas City, blacks commonly paid twice the amount for housing as whites who had earlier occupied the same units (KC Call, May 17, 1940). Even the Kansas City Real Estate Board reported in 1941 that "many owners were taking advantage of Negroes in the acute housing situation by raising the rents to a point which forced Negroes to buy homes at exorbitant prices (Webster, 1948:48).

Moreover, even though real estate records show that a substantial amount of housing was built during the 1920s in Kansas City, Missouri, between five and ten thousand homes stood vacant in the booming southern and eastern sections of the city; none of these homes were open to blacks due to racial covenants (KC Call, July 16, 1926). It is worth noting that many of the same whites who felt threatened by black residential expansion into their neighborhoods seriously argued that they had no where

else to live (Ibid.).

"DEADLINES"

A deadline was an informal name given to any artificial or natural barrier that whites and blacks came to recognise as a boundary over which blacks were not supposed to penetrate in their search for housing. In many cities they became major thoroughfares, commercially developed areas, railroad yards, parks, rivers, and so forth. They were not legally sanctioned by city mandate, but were rather de facto boundaries. For example, freeways frequently just so happen to be located in such a way that black residential movement is effectively stopped. In Kansas City, deadlines were usually established through the promotional efforts of several home improvement associations who designated specific streets as buffers from black infiltration. The location of these deadlines became well known by both blacks and whites and were often formidable barriers to black movement. It was common knowledge within the black communitiy that crossing a deadline to obtain housing, or even to socialize, would violate the unwritten but well established social code prohibiting it.

One of the first prominent deadlines was formed along Brooklyn Avenue in the direction of the eastward black movement in the 1920s. Whites were well-established along the eastern side of Brooklyn; a few elite blacks did, however, manage to live east of Brooklyn (Fields interview, 1978). Movement was also heavy to the south along Vine, Highland, and Woodland Avenues pressing at deadlines along 18th and 21st Streets. Racial tension erupted regularly in the deadline areas

and midnight bombings occurred frequently. Once Brooklyn was crossed, housing confrontations began to develop in the area between Brooklyn and Benton, ten blocks to the east, principally along Park, Olive, Wabash, Prospect, and Montgall streets. To the south, across 18th street, deadlines were set at various points up to 25th Street and to the east of Brooklyn (KC Call, June 11, 1926). It was in this general area during the late 1920s that blacks faced the greatest amount of violent resistance to their search for housing. White residents here took two deliberate steps to stop blacks. First, two neighborhood groups formed for the express purpose of stopping black residential movement; the East Side Improvement Association and the Southeast Improvement Association (Ibid.). Second, they circulated handbills which said: "Warning. We must restrict our homes against Negroes" (KC Call, December 24, 1926).

The deadlines were effective to a point, but they inevitably broke down as the growing black population pressed at their boundaries, at first slowly, and then quickly spilling over. The pressure at racial boundaries was simply too great to constitute a permanent barrier. Myrdal suggests that "in spite of the white vigilance on the frontiers of Negro districts, the one never gets absolutely fixed in all directions. Now and then a small break occurs, and the Negro community gains a little more space (1944:624). Robert Weaver likens the breakdown to a dam bursting under too much pressure:

> once a break is made, it is impossible to hold back the tide. What happens is that a new barrier is established somewhere beyond the location of the old one. This new barrier, in turn, holds until the pressure gets too great,

> or until the barrier develops an internal weakness; in the housing situation, the internal weakness is usually in the form of chronic vacancies in a white area which permits seepage of Negroes. But in housing, because the area available is seldom adequate and the incomes of most of the newcomers are low, overcrowding typifies the newly added area, as it did the older Black Belt (1948:239)

The industrial areas along the Blue Valley, which separates Kansas City from Independence, acted as a natural barrier to black movement to the east, and this funneled even more blacks toward the south. After crossing 21st Street (and 25th and 28th in some locations), it was not until the 1940s that the next deadline, 27th Street, was crossed (Fields Interview, 1978). Black movement was remarkably slow given the continued growth in population living in these areas. From 27th Street, the deadline moved to 31st, and then to 39th Street, 47th Street, and finally, in the late 1960s, to 63rd Street (Ibid.). Perhaps no boundary in Kansas City, Missouri, however, proved more formidable than the north-south thoroughfare, Troost. Even today there are few blacks living west of Troost.

Many whites living close to black neighborhoods that were threatening to push over into their own were often eager to sell to blacks; they wanted out and knew there were no white buyers. Despite the advantages whites saw in selling to blacks they were restrained from doing so (Myrdal, 1944:630). The principle reason was that they were afraid of breaking the law (restrictive covenants), just as for the same reason blacks were afraid to buy (Voss, 1959:12). In addition, neighbors and well organized improvement associations exerted tremendous social pressure on them not to sell to blacks. This pressure usually

worked until a black family broke the neighborhood ban; then there was only the threat of a law suit to dissuade the rest (Myrdal, 1944:635).

RACIAL VIOLENCE IN TRANSITIONAL NEIGHBORHOODS

Frequent bombings, threats of violence, and intimidation began to erupt throughout neighborhoods bordering black and white sections. Signs were frequently posted warning blacks against buying in white areas and to realtors for selling to them. Below is a poster that was nailed to trees within a highly volatile neighborhood near 25th and Park in 1928 (KC Call, October 26).

D A N G E R !

> COLORED PEOPLE are hereby notified that they will not be allowed to live in this block.
>
> THIS BLOCK IS WHITE AND IS GOING TO STAY WHITE AT ANY COST.
>
> Contemptible and unscrupulous white Real Estate Agents are trying to ruin the homes of hundreds of honest, law-abiding white people, who have spent their life's saving to secure a comfortable home in a respectable neighborhood. For a few dollars in money these "Parasites" will put the Negroes into trouble.
>
> A Committee of More Than One Thousand women and men have authorized this notice and are determined at any cost to keep the Negroes out of this block.
>
> If you are here, DON'T STAY, and if you are out, STAY OUT.
>
> By doing this you will save a lot of trouble to yourself and the white people, too (emphasis not added).

Threatening letters similar to the following were also commonplace:

> You can move them up here, but I'll blow up the first nigger that tries to come in a house up here (KC Call, 1927).
>
> Niggers have no business in this neighborhood. They ought to live in the hole north of Independence Avenue...

> if they move into any houses in this neighborhood they will be made into sausage meat (KC Call, 1927).

Such remarks were not usually carried out, and perhaps they are not truly representative of white attitudes toward blacks during this period. Certainly they were more common in neighborhoods confronted with the threat of black movement. Moveover, bombings were frequent enough to convince most blacks that the threats were not idle ones. Asa Martin reports one of the first violent episodes on record. In 1910 six homes along Montgall were bombed. Threats to others were made and 30 days notice to leave was given, followed by the signature "Dynamite" (1913:34). The remaining blacks who were not bombed were unable to sell their homes so they could leave, even though they lowered their asking price significantly (Ibid.).

The survey of the KC Call revealed that bombings and racial violence reached a peak in Kansas City during the 1920s, continued through the early 1930s when it subsided, only to be revived for a few brief months in the early 1950s. The survey also indicated 18 separate bombings of black homes from 1924 to 1930. Undoubtedly there were several additional bombings that were either not reported or were missed in the survey.

Perhaps more persuasive than bombings in Kansas City were the vivid accounts in the Call of bombings in other cities throughout the country. Since the Call reached nearly every black home in Kansas City, the impact must have been substantial. Consequently, the fear of violence inhibited blacks from considering a move into a white neighborhood. Even those who risked moving and were fortunate anough to avoid an act of reprisal lived in constant fear that it could also happen to

them due to the continual harrassment and threats by neighbors who objected to their presence. The Call's pages are filled with examples of black residents who routinely received calls in the night, threatening letters, rocks through windows, personal abuse, vandalism, and all forms of humiliation. These incidents were constant reminders to blacks that they were not welcome in white neighborhoods, and that violators would be dealt with harshly, if necessary.

Naturally, many black families were persuaded to leave. If the ill treatment did not force them out, there was always the threat of a law suit to enforce racial covenants. Not surprisingly, every law suit in Kansas City demanding the enforcement of racial covenants occurred in a transitional neighborhood. Blacks rarely challenged the covenants because the cost of going to court was too great and the chances of winning slim. NAACP funds were often used for racial covenant cases, but they were stretched too thin nationally for Kansas City to receive their financial support (KC Call, November 30, 1947). Given these bleak prospects, most blacks were therefore persuaded not to even try and challenge the "system" by attempting to move; they stayed, for the most part, within the designated boundaries, moving into neighborhoods no longer wanted by whites.

Although the official city policy did not condone violence as a means of halting black movement into white areas, there are few honest attempts on record to halt such behavior (KC Call Survey). When otherwise law abiding citizens held meetings in church basements and openly discussed the various ways they

could intimidate blacks who tried to move (Bluford and Benton interviews, 1978), the police did nothing to intercede when supplied with reliable information that bombings would occur (KC Call Survey). Police response to requests for help never came until after a home was already bombed or vandalized, and even then no concrete action was ever undertaken (Ibid.).

If the white citizenry did not always agree with the usage of such ugly, often violent tactics, their sympathy was, nevertheless, not with black victims. Whites considered black intruders as lawbreakers. Not only did they think their need to exclude blacks was morally right, the existence of racial covenants made them believe their efforts to keep blacks out was legally right, as well.

HOME IMPROVEMENT ASSOCIATIONS

Racial covenants were sometimes written by individual home owners. Generally, however, they were promoted by two groups: neighborhood improvement associations and developers of subdivisions. Both of them had support from realtors, the Federal Housing Administration (FHA), and financial institutions, whose policies advocated racial segregation. No one element in Kansas City was more responsible for promoting the need for racial covenants, and stirring up racial animosity, than the home improvement or "betterment" associations (Ibid.). Numerous such groups were organized after WWI in response to the threat of black movement. For many of them, especially in transitional areas where the threat of black encroachment was the strongest, their sole purpose was to prevent blacks from entering white neighborhoods. The same trend was occurring

all over the country, particularly in northern cities where blacks were rapidly migrating from the South. By the late 1940s, homes associations were routinely included by developers as a requirement of the title deed, but the activities of the suburban organizations were far different from the earlier ones that were specifically created to stop black movement.

To accomplish their goal of promoting racial segregation, the homes associations abutting black areas were principally involved in canvassing neighborhoods to secure greater coverage of racial covenants, lobbying City Hall, and most importantly, attracting broad public support for racial segregation. The amount of money spent on these activities was not insignificant. A large portion of their funding went to salary and legal fees used in connection with racial covenants (Weaver, 1948:250). For example, an estimated 150 protective associations were operating in Detroit and they supplied most of the financial and legal support for interests wishing to see the racial covenants maintained (Voss, 1959:146-148).

THE LINWOOD IMPROVEMENT ASSOCIATION

Throughout the 1920s and 1930s the most influential of all neighborhood groups in Kansas City was the notorious Linwood Improvement Association (LIA). Created in 1915, it was one of the first in the city. As with other such organizations prior to 1950, the Associations' main purpose was to keep blacks out of white neighborhoods. A typical example was a controversy in the late 1920s over the land contained within the boundaries of 28th to 31st, from Brooklyn to Paseo. The LIA actively campaigned at City Hall by asking the City Council to "aid in the

fight against colored residents moving into white neighborhoods" KC Call, May 28, 1926). The LIA was concerned because the 2800 blocks on Woodland and Michigan had recently been taken over by blacks and it was rumored that the 2900 block of Woodland would soon be turned over by whites who were anxious to sell. Emotions ran high. The LIA proposed to have the City condemn enough land between 28th and 29th streets, and between Spring Valley and Troost parks, to serve as a deadline to black movement. Sixty-two homes that were owned by blacks were located within this area. The LIA proceeded to launch a petition drive and obtained over 4,000 names supporting the condemnation. They urged homeowners to restrict their homes against "race." The president of the LIA, John Bowman, a realtor by trade, claimed that 66 to 80 percent of the homes in the area contained restrictions on race (KC Call, June 4, 1928). He added that the LIA represented some 10,000 "good" white people.

Blacks responded to the LIA campaign by forming their own neighborhood group, the Spring Valley Improvement Association (KC Call, September 10, 1926), perhaps the first such group for blacks in Kansas City. They attempted to gather data on population and housing conditions that would reveal the LIA's plan to unload the cost of the project on unknowing white residents south of 29th street (KC Call, August 17, 1926). Whites did, in fact, balk at the deadline proposal upon hearing that estimates for the cost of condemnation were placed at between one and two million dollars (Ibid.). Consequently, the LIA campaign failed to achieve the amount of coverage they had hoped for. Many whites may have been hesitent to sign a re-

strictive agreement for fear that it might lock them in. Whites were caught in a dilemma: they wanted protection from black movement, yet they also wanted the freedom to move away if blacks entered their neighborhood , but racial covenants brought the possibility of lawsuit if sales were made to blacks. In the end, the City turned down the LIA's proposal saying they could not justify another park area (KC Call, June 18, 1926).

In 1927, the LIA held a meeting for all neighborhood groups in Kansas City to make plans for a National Protective Association whose purpose was "to protect property from encroachments" (KC Call, July 29, 1927). They urged restrictions "to keep Negroes where they are," asserting that property values would go down if action was not taken. A band concert heightened the festival atmosphere of the meeting. Application was made to the circuit court for a 20 year pro forma decree of incorporation for the Association. The ultimate hope was to conduct a national movement to regulate the race question as it related to residential restrictions (KC Call, August 13, 1926).

Neighborhood groups such as the LIA were frequently unsuccessful in accomplishing their goal of barring blacks from white neighborhoods. Yet their effectiveness can be measured by the long term influence they had on racial attitudes. Their well publicized campaigns to promote the need for racial covenants made the public acutely aware of their existence. In turn, they helped promote and perpetuate racial animosity and prejudice The deep racial hatred harbored by homes associations during the height of racial covenant activity is perhaps best reflected in the statement of an officer of the Brookland-Dahlgreen Terrace

Protective Association in Washington, D.C., who told members:

> You're having a scourge here. You see colored real estate agents scurrying up your streets. It's too bad you can't take a nice healthy club or crowbar and lay them in the gutter where they belong. But our only redress is the courts and [racial covenants] (Weaver, 1948:250).

DEVELOPERS AND SUBDIVIDERS

Although protective associations were the most vocal promoters of racial covenants, their effectiveness in blanketing neighborhoods with them was insignificant compared with the success of developers. Developers wrote restrictions into the original title deed to each lot before the potential occupants had even purchased their homes; there was no involvement of the eventual parties to the agreement. While covenants written in transitional areas, on the other hand, caused more publicity and produced all of the court battles, agreements written by subdividers were handled quietly, yet their effect was immensely greater. Acting at first on their own initiative, and later under pressure from sources of finance (FHA), developers could totally restrict a new subdivision. McEntire describes them as follows:

> the modern large-scale merchant builder [who] builds not just houses but entire communities ...the combination of large-scale building methods with racial discrimination has given rise to the phenomenon of the totally white community...the developer has the power to exclude, and generally uses it to exclude unwanted minority groups completely (1960:177).

As a result, the rapid growth of suburban communities especially since WWII from which non-whites were absolutely excluded by the actions of developers, has undoubtedly extended and intensified racial segregation.

Developers were encouraged by many organizations to adopt the practice of including racial restrictions in title deeds. One such organization was the American Society of Civil Engineers. In their 1939 Manual of Land Division, they discussed the question of property declining due to the intrusion of blacks. The Manual states that

> Restrictive covenants in deeds specifying the exact use of property, the side, rear, and front yards, the cost of the house, the architecture, and even the race of the inhabitants, are extremely useful in design. They should be outlined at the time the design is made. The judicious use of racial covenants will do much to establish and protect property values. Such covenants are valuable in all residential development; subdivisions for the poor, as well as those of more ample means, benefit from these controls.

One developer in Kansas City, J.C. Nichols, firmly shared these views and provided the impetus for excluding suburban occupancy and, as a result, changed the entire pattern of black movement.

J.C. NICHOLS

Restrictions on property first began to appear in the United States just prior to WWI. J.C. Nichols, the most important name in housing and land development in Kansas City, was one of the first developers in the country to promote restrictions. He believed that restrictions were necessary to maintain the quality of housing he intended to build. Not only did he want to protect his investments, he wanted to guarantee home buyers that certain "undesirable" elements would "forever" be excluded. Theodore Brown, in his history of Kansas City, says that intentions were "to so maintain...property that it will permanently remain Kansas City's best residential district ...assuring buyers of home sites...that high standards will for-

ever be jealously guarded and protected against all undesirable conditions or any civic neglect" (1963:174).

Nichols' restrictions were written on "exclusive" high priced properties. In fact, among the first racial restrictions in Kansas City were those written by Nichols for Mission Hills in 1914 (Johnson County Plat Books). As anyone familiar with Kansas City knows, Mission Hills remains the most prestigious and affluent community in the KCMR. The presence of racial restrictions had a strong appeal to many of Kansas City's well to do who were moving from formerly exclusive areas, such as Quality Hill and Santa Fe Place, and who had experienced the effect of declining neighborhoods. Consequently, Nichols' reputation grew and as black movement increasingly threatened white neighborhoods, so did the acceptance of his philosophy of restrictions. By the 1920s, the practice, once confined to upper-class neighborhoods, had filtered down to properties inhabited by the middle class; shortly thereafter, even the lower class neighborhoods used them.

At first Nichols kept his restrictions simple: minimum lot size, minimum house size, minimum cost of lot and house, and other prohibitions which added to the "exclusive" character of the development. Most importantly, Nichols wanted to exclude non-caucasians. Because some of his first property was already deteriorating, in the 1930s he extended the term of the restrictions from the normal 10 years to 25 years. He also continued to develop and refine his concept and added several new restrictions for billboards, architectural design, color, and procedures for making renovations (Brown, 1963:175). In addition, restric-

tions that had previously been renewed only upon a majority vote of the residents were changed to an automatic renewal, unless the majority voted otherwise (Ibid.). Lastly, to insure that the restrictions were carefully enforced, he required that each subdivision appoint a homes association.

Nichols used the restrictions as a powerful selling tool and others were soon emulating his ideas. One important example is that lenders, who also saw restrictions as a good way of protecting their investments, soon began to demand them as a routine part of a developer's loan application. The relationship between developers and lenders therefore had a significant exclusionary effect. In every sense, Nichols set the standard for the housing industry in Kansas City. In doing so, he played a major role in establishing segregation for generations.

PLANNING CONTROLS

During the period shortly after WWI, planners also began to use restrictive covenants as a land-use planning tool by persuading developers to include them in deeds to property contained in subdivisions (Hagman, 1975:306). This became a practice of major importance because it helped institutionalize racial covenants within the housing industry. Similarly, once master plans were being written for cities, planners routinely set out sections suitable for black location. The first master plans in the Kansas City area were written in Kansas City, Kansas, by Harlan Barthalemew in 1927. A large detailed map recommends the blocks in which blacks should be allowed to live.[7] The plan itself advocates that the races be kept separate. Subsequent plans

with the same recommendations were written in 1932 and 1947. Kansas City, Missouri's first master plan was in 1943, and while there is nothing as explicitly racial as the Kansas City, Kansas, plans, it advocates the continued separation of the races for social and economic reasons (City Planning Department).

Early planners expressed the belief that homogeneity, both racial and economic, was desirable. Planning controls, such as zoning, were intended to achieve that purpose. One writer who observed these developments in 1920 was prompted to say that

> city planners and zoning experts were appealing to their clientele with promises that the new controls would protect them from 'undesirable neighbors'...to keep out Negroes, Japanese, Armenians, or whatever race most jars on the natives (Toll, 1969:262).

Planners who held these beliefs were significantly aided in the 1926 decision, Euclid v. Ambler Realty Company, (272 U.S. 365). While the Supreme Court sought to hold state power in check nine years earlier in Buchanan, in Euclid the Court upheld the concept of a comprehensive municipal zoning ordinance, unless clearly arbitrary and unreasonable. Euclid allowed planners to zone by social and economic class, thus perpetuating segregation. As a stated purpose, zoning by race, however, was largely possible because racial discrimination was socially acceptable; the legal process and the actions of planners merely aided and confirmed these beliefs.

Chapter 3 - Legal Issues

Property Rights vs. States Rights

Despite the passage of the 13th, 14th, and 15th Amendments, along with several civil rights laws shortly after the Civil War, whites maintained an overwhelming superior legal status to blacks. In 1883, the Supreme Court invalidated several sections of the 1875 Civil Rights Act by stating that the 14th Amendment does not prohibit the "wrongful acts of individuals unsupported by state authority...laws, customs, or judicial or executive proceedings" (Kluger, 1976). In 1896, Plessy v. Ferguson decided that segregation was compatible with equality (163 U.S. 537). As a result of these and other cases, it was clear that regardless of the issue, the chances of blacks winning through the judicial process during the first half of the 20th Century were remote (Kluger, 1976).

Although racial covenants are a relatively new phenomenon, their foundation can be traced to English common law. Under the statute of Westminster III enacted in 1290, a free individual had unrestrained "freedom to sell at his own pleasure his lands and tenements" (Voss, 1959:2). At this time, regulations and restrictions on the use of property were considered wrong, unless of significant social importance (Ibid.,12). From these principals, property rights of individuals evolved as "absolute" rights unless contrary to the interests of the state--an issue that would receive much debate in the 20th Century.

The first known case regarding the validity of racial restrictions was an 1890 municipal ordinance directed against the Chinese in San Francisco. Because it was a "public" action,

the U.S. Circuit Court for the Southern District of California ruled that the restriction denied the Chinese equal protection of the laws (Gandolfo v. Hartman, 49 Fed. 181 (1892)).

Municipal legislation was also passed in Baltimore in 1910 making it a violation of the City's zoning ordinance to permit a black person the right to purchase a home from a white (Weaver, 1948:235). Atlanta, Richmond, Louisville, and cities in several other southern and border states soon followed suit. In the north, some suburban cities were also beginning to pass ordinances excluding blacks from the city limits between 8:00 P.M. and 6:00 A.M. (Hagman, 1975:306). By 1917, the Supreme Court invalidated the Louisville ordinance claiming that it was an unreasonable interference with the right of property owners to freely dispose of their property without due process of the law (Buchanan v. Warley, 245 U.S. 60). In Buchanan, the Court was concerned only with "state interference with property rights" and did not extend the principle to include private agreements to exclude blacks. In effect, the Court refused to look at the issue as one of race (a common tendency of the courts until after WWII). Indeed, the Court felt that segregation was the best solution to the problem of avoiding racial hostility (Ibid.).

The first impression of the Buchanan decision is that it was an important victory for blacks because it effectively prevented further segregation by public institutions. It is clear now, however, that the racial covenant was a much more effective method of achieving segregation than was the local ordidance. Before Buchanan, segregation laws were subject to the

political process and therefore the possibility of repeal; covenants, however, could restrict land forever against blacks. In effect, there was no practical way of removing a covenant from the books. Furthermore, had residential segregation by ordinance been upheld in Buchanan, the Supreme Court would have most likely required equal, though separate, facilities (Weaver, 1948: 232). Under the control of private racial covenants, black housing remained separate and there was no public responsibility to insure that urban land be set aside or made available for black ownership or occupancy. Instead, black housing was confined to a limited area. In short, perhaps the most significant result of Buchanan was that it increased the importance of the racial covenant as the primary legal procedure available for the exclusion and segregation of black housing.

CORRIGAN VS. BUCKLEY

The inviolability of property rights as they were applied to the restrictive covenant cases, along with the desire of whites to segregate blacks, presented the courts with a serious conflict over the state's power to control property rights and the individual's right to due process and equal protection under the 14th Amendment. In the first racial covenant case to reach the courts, the Louisiana Supreme Court, in upholding the covenant, emphasized the importance of property and public policy.

> ...it would be unfortunate if our system of land tenure were so hidebound, or if the public policy of the general government...or state was so narrow, as to render unpracticable a scheme such as the one in question in this case, whereby an owner has sought to dispose of his property advantageously to himself and beneficially to the city wherein it lies (Queensborough Land Company v. Cazeaux, 67 So. 641 (1915)).

The attitude of the courts, in general, was cogently described in Parmalee v. Morris, where the Michigan Supreme Court ruled in 1922 that

> the law is powerless to eradicate racial instincts or to abolish distinctions which some citizens draw or account for racial differences in relation to their matter of purely private concern. For the law to abolish these distinctions in private dealings between individuals would only accentuate the difficulties (188 N.W. 330).

The property rights conflict was addressed by the U.S. Supreme Court in the 1926 landmark case, Corrigan v. Buckley, (271 U.S. 323). This was the only racial covenant case to reach the Supreme Court until 1945. The main issue in Corrigan involved the power of individuals to record racially restrictive covenants: was state court enforcement of covenants state action under the 14th Amendment, and if so, was it forbidden because it denies blacks the equal protection of the laws? Consistent with past decisions, the Court gave strong support to the doctrine that the 14th Amendment did not apply "to action by individuals in respect to their property," as set out in the 1883 civil rights cases (Ibid.).

Corrigan's impact was significant and most state courts followed its guidelines. In Missouri, all courts refused to address the constitutional issues claiming that they were resolved by Corrigan. In perhaps the most influential Kansas City case, Porter v. Johnson, the Missouri Supreme Court upheld the principle of individual property rights. The Court expressed what was then the universal view regarding the legality of racial covenants and their social necessity:

> [individuals] who own a home...have a right to protect it against...elements distasteful to them, and if they

> favor segregation, should have the confidence in the power and willingness of the courts to protect their investment in happiness and security (115 S.W.2d 529 (1938)).

Nevertheless, in the wake of Corrigan, opposition was slowly mounting to have the covenants overturned on the grounds that judicial enforcement of them was state action (Voss, 1959:19).

It is not surprising that the courts were so slow to address the important constitutional issues raised by racial covenants, for there were many prominent lawyers who supported them. For example, as late as 1944, the American Law Institute (ALI), whose views are written by leading legal scholars and nationally recognized attorneys, was recommending in its Restatement of Property that an exception be made to the general rule regarding the free disposal of property when "social conditions render desirable the exclusion of the racial or social group in question" (Sec. 406:2411-12). Although there was concern that the large number of blacks involved as potential conveyees would cause some interference with constitutional questions regarding the "power of alienation," it was considered less important than the "the avoidance of unpleasant racial and social relations and the stabilization of the value of land (Ibid.). Their position was solidified by the belief that "public opinion made it desirable to exclude "certain racial and social groups" (Ibid.). An indication of the ALI's influence was illustrated when a New Jersey Court shortly thereafter declared that the Restatement provided the basis for their decision to enforce a racial covenant (Voss, 1959:20).

The Restatement's view that race relations benefited by segregation was also justified because of the long held belief

by the courts and others that racial covenants were necessary to protect economic values and render property a more pleasant place to live. That the courts may have been more concerned with public policy than with constitutional questions is expressed by one author who ways that

> ...the Court believes that the policies favoring restraint on alienation outweigh the policies opposed to it, so that the state's welfare is better served by allowing the validity of the restraint than by denying it (Ribble, 1930: 851).

Some courts attempted to give the impression of neutrality regarding questions of property rights by declaring that a remedy under law is "equally available" to all litigants regardless of race or color" (Ridgway v. Cockburn, 296 N.Y.S. 943 (1937)). In other words, blacks could exclude whites, too, if they wanted. To illustrate their neutrality, the Missouri Supreme Court ruled in Porter that "Negroes have the same right in this respect as do those of other races" (Porter v. Johnson, 115 S.W. 2d 529 (1938)). Indeed, in Los Angeles and Washington, D.C. blacks did write covenants in a few instances to exclude whites (Voss, 1959). Similarly, in Kansas City, the Huber and Chrysler subdivisions were built for blacks and restricted against white occupancy (Webster, 1949:51-54). Obviously, restrictions against white occupancy were extremely rare, however. There is no evidence showing that blacks ever seriously tried to write such agreements or have them enforced. The last thing blacks had to worry about was the threat of white residency in their neighborhoods. Racial covenants were clearly a Caucasian innovation used to exclude blacks and other minorities.

Prior to the 1940s, sociological arguments were rarely used

in restrictive covenant cases, principally because the courts refused to consider anything beyond question of contractual and property rights. Such arguments were viewed as bizarre. In Missouri, sociological data was first used in the influential Porter case (115 S.W.2d 529 (1938)). Carl Johnson was an influential black attorney in Kansas City (eventually becoming the first black awarded a judgeship in Jackson County) who had long fought for black civil rights. In 1935, Johnson moved into a corner house at 2602 Tracy that was racially restricted. All of the homes on the 2600 block of Tracy were white occupied, while all of the three blocks surrounding the block were black occupied. A vacant lot directly across the street from 2602 had at one time been advertised for sale to blacks, but later whites tried to place restrictions on the property to afford them greater protection.

Johnson's key arguments were as follows: 1) the enforcement of the covenant would place undue hardship on 50,000 Negroes who, living in terribly crowded conditions, could not find available housing; 2) the court should consider the public policy of allowing "only 18 residences to be built for Negro occupancy... in Kansas City during the last 15 years" (Ibid.,533). The Jackson County and Circuit Courts both ruled in favor of Johnson, but not becuase of the sociological arguments. Instead, they maintained that there had been a "radical change in condition to the property in question and not the surrounding area where blacks already lived: (Ibid.,534). The Missouri Supreme Court overturned, however, saying that a restrictive contract can only be terminated be the "written release or conduct of the parties"

(Ibid.). All three courts relied on the traditional view narrowly defining the validity of the racial covenant as a contract rather than considering its sociological effect.

One of the first courts to recognize the relationship of sociological data to restrictive covenants was in 1944 when the California Supreme Court ruled, first, that crowded black districts are a consequence of residential segregation and, second, there is a public interest involved and covenants "must yield to the public interest in the sound development of the whole community" (Fairchild v. Raines, 151 Pac.2d 260). A couple of years later, the Circuit Court of St. Louis also addressed sociological conditions in the Shelley case (the same one that later reached the U.S. Supreme Court) by focusing on the increasing black population of St. Louis (Kraemer v. Shelley, 355 Mo.814 (1946)).

Social science studies were extensively used in the Sipes v. McGhee case in Detroit (25 N.W.2d 638 (1947)). Sipes, which was later heard jointly with Shelley by the U.S. Supreme Court, was a Detroit case. The conflict over racial covenants in Detroit was intense. The City was probably the scene of more racial violence in the '40s than any other city. One study maintained that overcrowding in dwellings was a primary cause of rioting in Detroit (Lee and Humphrey, 1943). Especially relevant to the Sipes case was the Report on Negro Housing produced by President Hoover's Conference on Home Building. It stated that

> residential segregation, which is sought to be maintained by court enforcement of the race restrictive covenant... has kept the Negro occupied [in] sections of cities through-

> out the country...[they] are fatally unwholesome places ...a menace to the health, morals and general decency of cities, plague spots for race expolitation, friction and riots (Voss, 1959:138).

In preparation for the Sipes case, the national office for the National Association for the Advancement of Colored People (NAACP), which supervised the litigation for blacks, based its major arguments on studies done in Detroit that would illustrate

> the dangers to society which are inherent in the restriction of members of minority groups to overcrowded slum areas are so great and so well recognized that a court of equity, charged with maintaining the public interest, should not, through the exercise of power given to it by the people, intensify so dangerous a situation (Ibid.).

Several amicus curiae briefs were filed by organization who sought to support these same points. The American Jewish Congress provided overwhelming documentation that restrictions in housing "create overcrowding, poverty, disease, delinquency, crime, tensions, and other social evils" (Ibid.,142).

Even though there was a growing acceptance of such views, the old doctrines still held precedence for a few more years. When the U.S. Supreme Court granted certiorari to McGhee, Shelley, and Hurd, Justice Douglas, speaking for the Court, said that such matters were beyond the authority of the courts and were the responsibility of other branches of government (Shelley v. Kraemer, 334 U.S. 1, 824 (1948). Douglas maintained, as had almost every previous court, that the real issue was one of contractual rights and not public policy. Six years later,however, in Brown v. Topeka Board of Education, the Court would again address similar issues, but this time recognized the adverse psychological effect of the duel school system on minorites (347 U.S. 483

(1954)). Thus the philosophy of the Court had finally changed.

THE CHANGED CONDITIONS DOCTRINE

Turnover in the fringe neighborhoods was rapid, increasingly so each year. This fact, combined with the slowness of the judicial process, meant that by the time a racial covenant case reached the courts, several more back families had usually moved into the neighborhood in question. Thus, while there may have been but one or two families moving into an all white block when the law suit was filed, by the time it reached the court the majority was often black. This became a key issue facing the lower courts throughout the history of the racial covenant cases and was commonly referred to as the "changed conditions" doctrine. The courts were faced with these questions: at what point did a white district become a black one? What percent of black homeowners was necessary before a district could no longer be considered a white one?

In addressing this issue, the courts scrutinized the intention, or purpose, of the racial covenant, which was based upon legal contractual principle that there was a mutual benefit to all parties subject to the agreement. The benefit, of course, was derived by excluding blacks from certain specified areas or districts. Consequently, when a number of blacks entered a formerly all-white district, the benefit principle was both altered and challenged. The general tendency of the courts in considering the changed conditions doctrine was to refuse to uphold an agreement

> when the neighborhood in question has so changed in its

> character and environment and in the uses to which the property therein may be put that the purpose of the covenant cannot be carried out, or that its enforcement would substantially lessen the value of the property, or, in short, that injunctive relief would not give a benefit but rather impose a hardship (Hundley v. Gorowitz, 132 Fed.2d 24 (1942)).

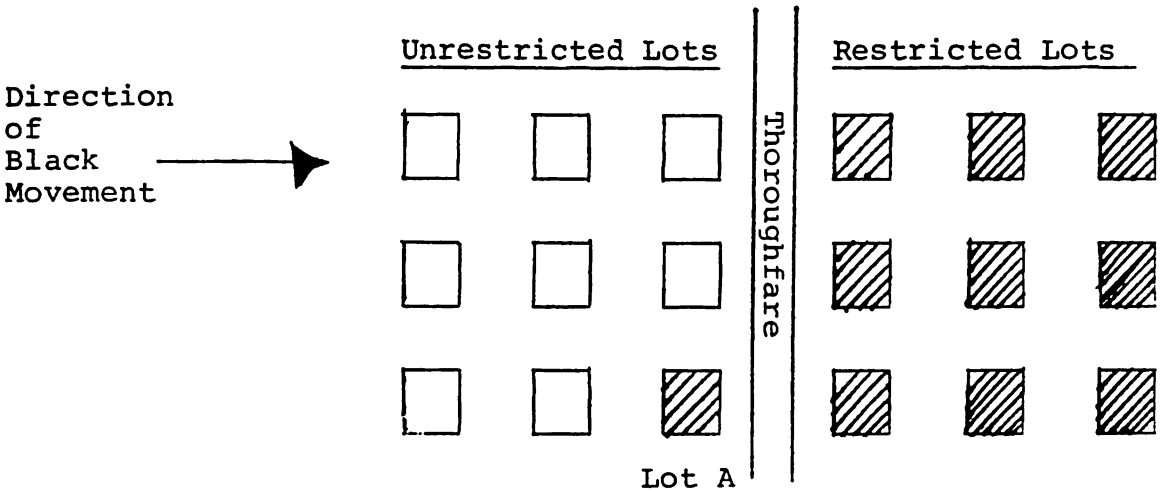
The Missouri Supreme Court followed the same general rule on changed conditions in Pickel v. McCawley (44 S.W.2d 857 (1931)). In this case, blacks had purchased homes in a white district to such an extent that the white person who tried to enforce the covenant was now in the minority; therefore no remedy was bestowed. The Court reasoned that if complete neighborhood coverage by racial covenant was intended (by the homes association) the signatures of all property owners was essential; anything less would have defeated the purpose set out by the restrictions. When a judgment was finally rendered, only one white family remained on the block. (The Missouri Supreme Court reached the opposite conclusion seven years later in the Porter v. Johnson case.) Under these circumstances, the enforcement of covenants was ruled inequitable. The courts were therefore unlikely to uphold a covenant purporting to protect an all-white district that had become largely inhabited by blacks and which was now commonly referred to as a "Negro district" (Letteau v. Ellis, 10 Pac.2d 496 (1932)). In this regard, it is interesting to note that by 1950 the overwhelming majority of land occupied by blacks in Kansas City, Missouri, was covered by racial covenants that had not yet expired. This phenomenon occurred in Los Angeles, Chicago, and most other northern cities, as well (Weaver, 1948:236).

In Thornhill v. Herdt, another St. Louis case, the Pickel doctrine was skirted when those who signed covenants specified their intention to be bound, regardless of the non-signers, or upon the likelihood that a certain percentage, less than the whole, of property owners signed (130 S.W.2d 175 (1939)). On the other hand, a California court held that "the number of parties to such an agreement is not the test of its validity" (Stone v. Jones, 152 Pac.2d 19 (1944)). Also, in contrast, the Oklahoma Supreme Court believed that a certain percentage of signatures was necessary before any property was restricted and non-signers, in no instance were bound. These percentages varied from 51 percent (Hemsley v. Sage, 154 Pac.2d 577 (1944); to 70 percent (Lyons v. Wallen, 133 Pac.2d 555 (1942)); and to 90 percent (Hemsley v. Hough, 157 Pac.2d, 182 (1945)).

A controversial Topeka, Kansas, case provided an exception to the commonly accepted rule that if changed conditions were outside of a restricted area, no matter how close, the restriction was enforceable (Clark v. Vaughn, 131 Kan. 438 (1930)). In the Clark case, an individually restricted lot was separated from a racially restricted district by a thoroughfare. Surrounding the one restricted lot were unrestricted lots that were eventually bought up by blacks. In figure 5 on the next page, the owner of lot A, a restricted lot in a group of unrestricted houses on one side of a thoroughfare, tried to sell to blacks because he could not get a fair price from whites. Since blacks occupied a few of the unrestricted homes surrounding lot A before the restriction was adopted, the Court refused to grant an injunction on the grounds that it was "inequitable

and burdensome."

Figure 5 - Example of Clark Rule



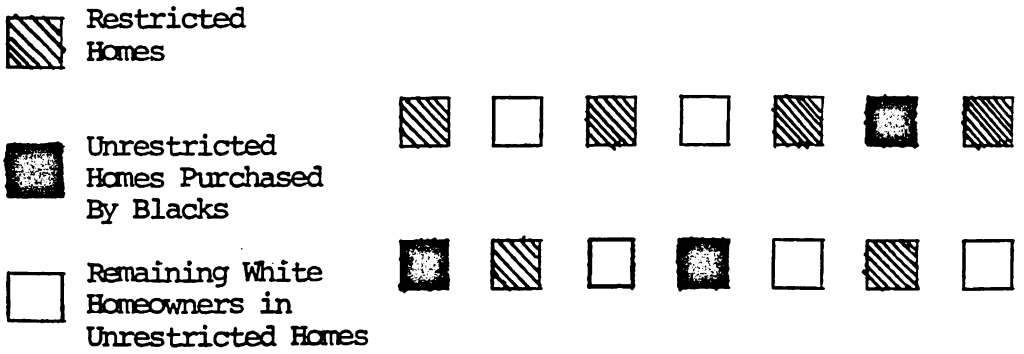
The Clark decision was highly unpopular nationally because it defied the majority view upholding the sanctity of racial covenants. In the above example, the prevailing view would hold that lot A adopted restrictions due to anticipated black expansion from the neighboring black community; the agreement was for protection. Changed conditions outside of a restricted district did not make the enforcement of racial covenants inequitable (Grady v. Garland, 89 Fed.2d 817 (1937)). The fact that restrictions could not be overturned merely by pointing out the presence of a few black families in close proximity to a restricted area (Ibid.,819) posed a severe barrier to black movement. Proof of sweeping neighborhood changes were necessary. Such evidence was not needed in Clark, but similar circumstances were never successfully accepted in other courts (Voss, 1959:28).

A further handicap to blacks existed. This was the reluctance of the courts to overturn covenants even if conditions had changed: "valid and solemn contracts should not be lightly

set aside" (Grady v. Garland, 89 Fed.2d 819 (1937)). Contracting parties were therefore obligated to "assume the burdens and benefits, for equity does not grant relief against a bad bargain voluntarily made and unbreached" (Vernon v. Reynold Realty Co., 36 S.E.2d 710 (1946)).

Another question arose in California over circumstances where restricted lots did not form a contiguous area, or when the district in question was not completely blanketed with racial restrictions (Foster v. Stewart, 25 Pac.2d 497 (1933)). This was a common situation. The key question presented was whether owners without restrictions could be protected from intruding blacks when owners of adjacent lots were free to sell or rent to non-whites. Figure 6 below illustrates this condition. Six non-contiguous homes are restricted and three unrestricted homes have been purchased by blacks. Under the changed conditions rule, could the homeowners in the restricted lots prevent the remaining white homeowners from selling to blacks who have moved into unrestricted homes, claiming that the intention of their restrictive agreement, although not signed by 100 percent of the homeowners, was to cover the entire neighborhood?

Figure 6 - Example of the Foster Rule of "Changed Conditions."



Could the three black families be ordered to leave by the courts on the basis that they were living in a white district? The courts, on the one hand, sought to determine whether the intention of owners whose lots were restricted was to exclude blacks from the remaining unrestricted lots as well; on the other hand, the courts considered whether the fact that blacks, who had already moved into unrestricted homes in the neighborhood, prevented any future mutual benefit and thus destroyed the purpose of the covenant. According to Foster, in the above example, the black families would have to move out because the white residents still constituted a majority and the purpose of the covenant was therefore still possible.

SHELLEY V. KRAEMER

In 1945, the Supreme Court denied a writ of certiorari for the racial covenant case, Mays v. Burgess (325 U.S. 868). Then in 1947, certiorari was granted when St. Louis attorneys filed a petition for the Shelley case. Accordingly, the NAACP national office in New York quickly did the same for the McGhee v. Sipes case in Detroit. Several months later, certiorari was also granted for two District of Columbia cases, Hurd v. Hodge and Urciolo v. Hodge. Thus the U.S. Supreme Court consolidated two state cases and two federal cases.

The petitioners, however, took separate courses of action. For McGhee, a lengthy and persuasive brief based on sociological arguments was prepared. On the other hand, the attorneys for Shelley relied on the standard argument that judicial enforcement of racial covenants is state action contrary to public policy and the U.S. Constitution. Charles Houston, a remarkable

black Washington attorney, handled the Federal cases by blending both the sociological and legal arguments.

Justice Vinson, acting for the majority, first addressed the petitioners claim that judicial enforcement of the restrictive covenants violated rights guaranteed by the equal protection clause of the Fourteenth Amendment. The question of Court enforcement had not been raised in the 1925 Corrigan v. Buckley case, only the validity of covenants was reviewed. Vinson determined that covenants were directed toward a specific class

> defined wholly in terms of race or color...[and] among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property" (334 U.S. 1 at 10 (1948))

Vinson further believed that while the formation of restrictive covenants was by private action, judicial enforcement of them amounted to state action:

> It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, the petitioners would have been free to occupy the properties in question without restraint (Ibid.).

REACTION TO SHELLEY

The black community in Kansas City heralded Shelley as the most significant decision for blacks since the Proclamation (KC Call, June 6, 1947). Their hopes were, however, dashed somewhat by the subsequent uncertainty and controversy over the legal interpretation of the decision, not to mention the unwillingness of many to accept the ruling. One glaring loophole in Shelley was Justice Vinson's belief that while racial agreements may not be enforced, it was perfectly lawful

to make them and to observe their terms so long as the observance was purely voluntary. Many felt therefore that the effect of the decision was to leave landowners with a perfectly valid contract, but the breach of it left no available remedy (Livermore, 1949:493).

Not surprisingly, attorneys in Kansas City and elsewhere continued to routinely insert racial clauses into title deeds, as if nothing had happened; business as usual. There was no pressure, or reason, for them to do otherwise. The lawyers who drafted covenants, their clients, land developers, et al., were well aware that the average person wuld not know that the racial covenant found in their title deed was unenforceable. Thus the presence of racial covenants in title deeds could provide considerable moral or psychological effect upon prospective purchasers (McCasland, 1949:679-681).

Throughout the 1950s legal scholars debated the meaning of Shelley. A few maintained the traditional view that Shelley was unconstitutional simply because it denied individuals of their right to property. One such person was Albert L. Reeves, a Federal District Court judge in Kansas City during this period. While speaking at a Kansas City Bar Association luncheon at the Hotel Phillips, he expressed his displeasure with Shelley, and echoed the views of many others, by stating that "...in this broad land the time should never come when private citizens should not enjoy the right to say who their neighbors shall be. Extremes of race cannot live comfortably side by side..." (KC Call, 1949). Blacks were not only angry about Reeves' opinions, they were upset because

an important judge had openly defied his oath to defend the highest court in the land (Ibid.).

Numerous journal and law review articles were written regarding the possible ways one might circumvent Shelley. One such article was written by the former governor of Kansas, Robert Bennett, who in the early 1950s was a young attorney in Overland Park, Kansas. It was Bennett's belief that a racial covenant is valid until one of the parties decides to terminate it (1953:86-93). In effect, this means that most of the covenants written years ago with racial restrictions are still binding today.

Although Shelley was controversial, it did clear up one important question: explicit racial agreements would not be tolerated in the courts. In the future, proponants of segregation were forced to use more subtle methods of excluding blacks. As a result, a variety of elaborate schemes were devised to circumvent Shelley.

METHODS OF CIRCUMVENTION

One commonly used technique was to eliminate references to minorities and make restrictions limiting the number of persons per room, proper care of premises, lot size, cost of house, and so forth (Livermore, 1949:493). Such restrictions became popularly known as "community conservation agreements" (Ibid.). Although used by developers like J.C. Nichols for years, they now became very popular because it was thought that the restrictions would provide a practical answer that could accomplish the same thing as racial covenants. Today their usage is widespread in suburban areas and there is a wealth of evidence to

suggest that they have been successful in excluding blacks, although the courts have not readily accepted the view, until recently, that such restrictions are "exclusionary" unless against the "general welfare of the region (Southern Burlington County NAACP v. Township of Mount Laurel, 336 A2d. 713 (1975)).

In addition, restrictions on lot size, etc., did not protect against well-to-do blacks, the ones most likely to move into suburban white neighborhoods. To counter this deficiency, exclusive property owners' associations were formed to control the admission of new residents. Some of the techniques they used to insure sales to "appropriate" buyers include the following (Samuel Jackson testimony, October 10, 1963):

1) A "lease of property" is made when subdivisions are built, but title remains with the building corporation. A board of directors determines the sale of properties. Two communities, one in Kansas City, Kansas, and the one in Kansas City, Missouri, both practiced this method.

2) Title remained with the resident, but a sale could not be made without a board of directors approval.

3) A "permit committee" was set up and residents were required to get a permit from the neighborhood committee before a sale could be made.

4) Sales were made only after approval by the builder or owner of the initial purchase contract.

5) Sales could be made only after approval by the owner of an adjacent lot.

6) Neighborhood improvement associations would set up a

a sinking fund to purchase homes from blacks who had recently bought in white neighborhoods.

7) Property is owned under a "land trust arrangement plan" which gives owners control over the operation and management of all property within a subdivision (Heard, Jr., 1948:44).

Most of the above examples fall under one of two general classifications: the "right of first refusal," and "buy-back" provisions. The right of first refusal simply means that a third party, usually neigbors, a homes association, or a builder/developer, has the right to refuse any proposed sale. An example of the language found in a typical right of first refusal would state that

> if the original purchaser of a lot from the developer decides to sell said lot...he must sell to adjacent property or lot owners on his right or left, unless he obtains a release from them in writing (Jackson County Record Books (Independence), Woodridge Subdivision, 1969,book 107:540).

Buy back provisions went one step further by allowing an outright purchase of the property if a sale is not satisfactory to neighbors, the homes association, or developer (whichever is indicated by the deed). A typical buy back provision would state that

> no sale of said lots shall be consumated without at least a 15 days written notice to the proprietors and the owners of the two lots adjoining lot on the sides, of the terms thereof, and any of them shall have the right to buy said lot on such terms within 15 days, by giving notice to the sellers of their intentions ...(Ibid., Harvest Village, 1968, book I-17:1305).

Examples of each of these clauses have occurred in Kansas City with some regularity, as many subdivisions include them in the original title deed. John Dwyer, of the Chicago Title

Company, states that about two-thirds of the subdivisions under the Independence section of Jackson County Courthouse records (everything outside of Kansas City, Missouri) contain these clauses (Interview, 1978). This includes areas that were built up after 1950 and the Shelley decision: Independence south, Lee Summit, Raytown, Hickman Mills, Grandview, Blue Springs, etc. They are less commonly found on the Kansas side. Although Chicago Title should have a good idea of the types of restrictions written into title deeds, the survey of deeds for this thesis failed to reveal as pervasive a coverage of these clauses in suburban Jackson County. During an eight year period from 1967 to 1975, only 25 subdivisions were found to contain these clauses, and they were generally for more "exclusive" developments.

THE DAMAGES ISSUE

In addition to the "non-explicit" practices that followed Shelley, the question of "damages" remained unanswered. The issue facing the courts was twofold: first, could damages be enforced through private action any more than an injunction, as provided for in Shelley? Second, presuming enforcement was possible, how would the court measure the damages?

In Kansas City, the Jackson County circuit court simultaneously reviewed several damages cases on properties located at 2630 E. 29th, 2639-41 Benton Boulevard, 2944 Victor Place, and one other home in the vicinity. Judge Ben Terte ruled that the cases were an attempt to circumvent Shelley (KC Call, January 21, 1949). The plaintiffs filed for an amended petition,

but the earlier motions were sustained by Judge James Broaddus on the basis that no liability could ensue on the part of white persons who violate restrictive agreements (KC Call, April 8, 1949). The opinion of the Missouri Supreme Court, however, differed. Six cases asking for damages reached various state supreme courts, including Missouri's. Only Missouri and Oklahoma ruled that the enforcement of damages, under the Shelley doctrine, was constitutional (Weiss v. Leaon, 359 Mo. 1943 (1949)). The Missouri Court reasoned in Weiss that restrictive covenants written by white citizens were valid and enforceable under law because the remedy, damages, did not injure the right of blacks to obtain property equally with whites. They reached this conclusion largely because no legal action was ever brought against blacks in damage suits. Instead, whites were always pitted against whites.

The Oklahoma and Missouri decisions were widely criticized in law review articles. In addition, the black community in Kansas City felt that the effect of the decision was to inhibit white owners from selling to blacks for fear of a law suit (KC Call, December 23, 1949). Not until 1953 did the U.S. Supreme Court intervene and attempt to clarify the issue by hearing a damages case from Los Angeles.

BARROWS V. JACKSON

Barrows and some other whites brought a damage suit in Los Angeles against Leola Jackson, a white neighbor, for selling to a black. Barrows claimed that their property was "materially depreciated in value" and therefore had become "less attractive

as a residential area (346 U.S. 255 (1953). It was clear that enforcing the covenant would involve state action, but the critical question was whether allowing damages would deprive anyone of their constitutional rights. The Court ruled that, indirectly, blacks were the ones who would occupy and use the property, so the result was a denial of equal protection (Ibid., 249, 260). Indeed, the NAACP and several other black organizations helped defend Mrs. Jackson, a white, because they felt it was in their interest to do so since the explicit purpose of the damages suits was to exclude blacks (Voss, 1959:243-246).

Vinson, who wrote the majority opinion in Shelley, feeling that the subject had been adequately covered there, dissented in Barrows saying the Shelley rule must be applied; that is, no direct damage was caused to blacks (346 U.S. 264). While Vinson believed the restrictive covenants were struck down in Shelley because they deprived blacks of property solely because of race, in Barrows he thought no blacks were damaged because the suit was brought against Mrs. Jackson, a white, which left blacks free to stay on the property, undisturbed (Ibid.,262).

Shortly after the Barrows decision, a futile attempt was made by Barrows for a rehearing. Property owners' associations from all over the country jointly signed a brief supporting the petitioners. Among the signers was the Santa Fe Place Improvement Association in Kansas City, Missouri (Voss, 1959: 244). It is worth noting the desparate nature of the arguments made in the property owners' brief; also, how they now stress "sociological" evidence rather than constitutional,

thus indicating that they were now on the defensive for the first time. They argued as follows:

1) The loss in property values due to the presence of blacks was as real as those caused by fire or other disaster;

2) Restrictive covenants are a defense for the protection of the rights of racial classes;

3) Restrictive covenants are not inhuman, but instead represent a fact of life--races are different and should remain separate;

4) Restrictive covenants protect whites against the high rate of crime committed by blacks;

5) The true intention of blacks is not to occupy homes in white neighborhoods, but to inter-marry (Ibid.).

The Barrows decision was another important turning point for blacks and the courts interpretation of their rights. Legal precedent was no longer overwhelmingly white. The slow change was due to a variety of inter-related reasons. One explanation is that the Roosevelt Court increasingly saw itself as an arm of the government and began to oversee and enforce government actions. For example, all other previous courts had tended to view the restrictive covenant cases as private actions, as they did even in the landmark Shelley case. In the Barrows decision, however, the Supreme Court finally agreed that black rights under the Fourteenth Amendment were being unduly restricted. Another change is that while the discrimination caused by private actions had previously gained support through court enforcement, the restrictive covenant cases involving individual actions had now evolved into class actions. It was inevitable. The courts could no longer ignore the obvious: not just one black family was being

denied housing by private restrictive agreements, but an entire black race. For years blacks had been trying, unsuccessfully, to show that the racial covenants had been largely responsible for crowded, slum housing and now the courts were agreeing. "Civil Rights" was now the important issue facing the courts.

CHAPTER 4 - THE ROLE OF LENDERS AND REALTORS

Racially restrictive covenants were strongly supported by the policies and practices of several key actors; namely, the Federal Housing Administration (FHA), lenders, and realtors. Local lenders supported racial segregation through two explicit policies: first, by lending to blacks only in areas that contained no racial restrictions; second, by refusing to finance the construction of housing for blacks in all locations, sometimes even in black neighborhoods. This guaranteed that blacks live in older housing no longer wanted by whites. The general rule in transitional neighborhoods, where the above rules were not always clear-cut, was to deny a loan to the first black to enter an all-white area. Once a black moved in, however, lenders no longer considered it a white area (Webster, 1948:46). These practices remained unchanged throughout the 1950s and 1960s. In his testimony before the Kansas Conference on Discrimination in Real Property held in 1963, Don Sewing, a successful black realtor who started in the field in the mid 1950s, related an incident in which he went to the Anchor Savings and Loan with an application to get financing for a white client who wanted to purchase a home on the northeast corner of 9th and Quindaro in Kansas City, Kansas. The lender told him no because the block was unbroken. Sewing explained that his client was white; the lender said, in that case, he would be glad to consider the loan.

Several generations of blacks went without access to any type of financing for housing. There were no black lenders in the Kansas City area until 1947 when the Douglas State Bank was

opened (by Don Sewing's father) in Kansas City, Kansas (Sewing interview, 1978). The Douglas, however, was a small volume operation that was hard pressed to satisfy the black demand for mortgage loans (Tillman testimony, October 10, 1963). Other mortgage lenders, observing good business and lending practices, opposed any change in racial policies until forced to by decree (Weaver, 1948:237). Recent red-lining surveys in Kansas City, Missouri, verify that a disproportionate share of loans are still going to suburban locations, even from inner city lenders (KC Star, April 16, 1978:1 and July 8, 1980:1). Not only do such policies deny blacks mortgage loans, their deposits are being used to aid suburban development, areas still largely uninhabited by blacks. Many of the policies and practices of local lenders in Kansas City are directly related to those of the FHA.

THE FEDERAL HOUSING AUTHORITY

The country's major mortgage lender from 1934 on has been the FHA. Their policies, perhaps more than any other factor, helped institutionalize the racial covenant. Because they adopted the racial agreement as an official policy, every other institution involved in housing was obliged to act accordingly. For example, the suburban mass production of housing by developers was made possible in two ways: (1 FHA insurance guarantees of long-term low interest mortgage loans were made available to millions of white homebuyers;2)developers were able to get major commitments of mortgage insurance in advance of construction enabling them to borrow enough money to build hundreds of homes at one time with every confidence that they would have

buyers (McEntire, 1960:177).

Even though racial covenants were not a public control, they provided the FHA with the most efficacious way of excluding blacks prior to 1948. In 1938, Section 137 of the FHA Manual stated that

> ...if the children of people living in an area are compelled to attend school where the majority or a goodly number of the pupils represent a far lower level of society or incompatible racial element, the neighborhood under consideration will prove far less stable than if this condition did not exist (USCCR, 1973:23).

As a result, appraisors were advised to lower their rating of properties in neighborhoods occupied by "inharmonious racial or nationality groups..."(Ibid.). Moreover, old policies do not easily die. As recently as 1975, the McMichael's appraising manual, which is commonly used by realtors, lenders, public and private appraisers, still contained a listing of ethnic groups ranked in descending order from those who are most desirable to those who have the most adverse effect on property values. Whites are ranked at the top of the list while blacks and Mexican-Americans are ranked at the very bottom (Missouri Housing Development Commission, 1978:11). Similarly, it was not until 1965 that the FHA formally ceased to practice red lining and it was 1968 before any effective action was taken to make mortgage insurance available to red lined areas (U.S. Senate Hearing, 1971:2755). In this respect, a Civil Rights Commission representative in 1966, after weeks of observing FHA appraisers in Chicago, concluded that there were three types of houses FHA absolutely would not insure: homes next to factories; homes built on cedar posts; and a

home in a white neighborhood into which a black proposed to move (Polikoff, 1978:18).

To further insure racial harmony, a model restrictive covenant was recommended by the FHA Manual prescribing the "enforcement of proper zoning regulations and appropriate deed restrictions" (USCCR, 1973:23). The Manual also stressed the consideration of whether the property to be insured was protected against "adverse influences." In the case of undeveloped land, valuators were instructed in Section 980 to determine whether

> effective restrictive covenants are recorded against the entire tract, since these provide the surest protection against undesirable encroachment and inharmonious use. To be most effective, deed restrictions should be imposed upon all land in the immediate environment of the subject locations (FHA Manual, 1938).

The policy set out by the FHA underwriting manual therefore strongly discouraged racially mixed neighborhoods. The FHA could easily enforce the policy simply by withholding loan guarantees to violators (USCCR, 1973:21). Consequently, it is not surprising that private operators seeking to secure FHA backing usually followed the practice set out by the FHA and the lending agency (Sterner, 1943:313 and Webster, 1949:45).

When racial covenants were outlawed in 1948, the FHA received considerable pressure to adopt a new policy. They did not do so willingly. Finally, after more than a year, and President Truman's insistance, the FHA complied by requiring that insurance be withheld if, after February 15, 1950, a racial restriction was attached to the piece of property in question (Voss, 1959:226). Of particular interest was their decision not to apply the new policy to covenants already in

existence. The new policy was therefore an ineffective step in discouraging the continued observance of racial covenants. In Kansas City, the courthouse record books for each of the six counties in the metropolitan area show page after page of racial restrictions filed between the announcement date and the February 15th deadline. Developers were obviously anxious to get their subdivisions racially restricted before the FHA deadline. Of further importance is that many of these subdivisions were huge tracts of undeveloped land, owned and restricted by a single landowner.

Needless to say, controversy developed over the intentions of the FHA under the new February 15 guidelines. In an attempt to clarify the new policy, the FHA Commissioner, Franklin Richards, predicted little change in FHA activities due to the new order (New York Times, December 4, 1949:84). Indeed, FHA continued to refuse loans to blacks seeking housing in white areas. They also continued to grant insurance on restricted property. Furthermore, they made it clear to realtors that they did not object to so-called "gentlemen's agreements" or other arrangements requiring the approval of sales by neighbors or the board of a neighborhood group (Orfield, 1974-75:788). Amazingly, it was not until 1962 that the FHA went on record to officially say that racial discrimination in housing is contrary to federal housing policy (Executive Order No. 11063, 1959-63:652).

• What effect did the FHA policy changes have on black housing choice after Shelley? The United States Commission on Civil Rights in 1975 declared that their actions had a negligible

effect on black housing choice (1975:41). As late as 1959, it is estimated that less than two percent of the FHA insured housing used nationally for the post WWII housing boom was made available to minorities (USCCR, 1967:5), and most of this was on a segregated basis (USCCR, 1973:126). The record of the Veterans' Administration (VA), the other major lender following the war, was no better. Millions of white families were able to buy their first home due to the favorable terms offered them by the FHA and the VA, while blacks received no such opportunity.

Conventional financing, other than FHA and VA, offered no better alternative to blacks. Conventional financing was supervised by federal agencies such as the Federal Home Loan Bank Board, whose policy was to favor racial homogeneity (USCCR Hearings, 1961:735). By 1961, only one of the four federal agencies that regulated conventional lenders had even bothered to adopt regulations condemning discrimination in mortgage lending (USCCR Report, 1961:31-53).

The 1968 Housing Act brought many changes to FHA's policy, the most important being to shift its focus from suburban locations to central city ones. The main program, Section 235 housing, was replete with scandal; foreclosures were commonplace. Furthermore, if the intentions of FHA were now to promote minority housing opportunities, builders and owners who participated in federally sponsored programs nevertheless continued to operate in the same discriminatory manner as they had in the past (USCCR, 1975:41).

Did lenders derive their discriminatory policies from the predominent community view that wanted to see segregation

enforced and maintained? In the absence of racial covenants, employment discrimination, and so forth, would lenders have given blacks fair and equal treatment or would they have refused loans to blacks without any community pressure? One study on Kansas City suggests that in the absence of racial covenants and gentleman's agreements "the Negroes economic position and the home he wished to purchase might both have been of a quality which would have been favorably viewed by lending institutions" (City Developement Department, Kansas City, Missouri, 1969:20). It is the view here that segregation had become so institutionalized that even if one segment, lenders, had chosen not to participate, they would have been helpless to do so. Racial covenants and agreements gave legal sanction to segregative practices that engulfed the entire housing industry, making it imperative that everyone comply, even if unwillingly.

THE ROLE OF REALTORS

Realtors are often called the single most important force contributing to racial segregation due to their ability to selectively determine in which locations buyers will be shown homes. Virtually everyone depends upon them to buy or sell a home. The unwillingness of realtors to make their services available to blacks and other minorities has had the effect of creating separate housing markets. Historically, the policy of real estate boards, both locally and nationally, has been to oppose the entry of non-white persons into all-white neighborhoods. With only occasional exceptions, real estate brokers have been, and remain, unwilling to negotiate the sale or rental

of property to minority persons, unless the areas are considered appropriate; that is, where minorities already live. Realtors consider doing otherwise an unethical practice.

One of the earliest records encouraging this policy was recorded in 1917 by the Chicago Real Estate Board when they proposed a plan for Chicago.

> The old Negro districts are overflowing and new territory must be furnished...it is desired in the interest of all, that each block shall be filled solidly and further expansion shall be confined to contiguous blocks, and that the present method of obtaining a single building in scattered blocks be discontinued (McEntire, 1960:240).

Clearly, realtors in Chicago, and elsewhere, largely determined the direction of black movement and the pattern of expansion funneling blacks into blocks adjacent to the areas in which they were allowed to live. Many long-time black residents of Kansas City, Missouri, are convinced that the southeasterly, block by block movement of the black section is not a purely voluntary phenomenon, but rather the result of a well planned design by realtors and lenders (Bryant, Fields, and Thomas interviews, 1978).

By 1924, the National Association of Real Estate Boards (NAREB) adopted Article 34 of the Code of Ethics. It stated that

> a realtor should never...introduc[e] into a neighborhood ...members of any race, nationality, or an individual whose presence will clearly be detrimental to property values in that neighborhood.

Local boards follow the policies advocated by the National Board and this accounts for the highly uniform racial practices observed among real estate brokers in all sections of the country (McEntire, 1960:239). As a consequence, local boards all over the country, including the Kansas City Real Estate Board (KCREB), adopted the intent of the language found in Article 34 (Sewing

interview, 1978). By 1950, reference to "race, nationality, or any individual" was omitted from Article 34 and the phrase "a character of property..." was substituted (McEntire, 1960:240). The intent nevertheless remained the same and for years thereafter few changes occurred in realtor practices.

One legal scholar wrote in 1948 that in Indianapolis, as in most cities, the restrictive covenants were so firmly supported by extra-legal sanctions imposed by realtors, lenders and the public that the covenants themselves were of no great significance (Frank, 24). In other words, three forces were responsible for determining black location: 1) the realtors' code of ethics; 2) the inability to obtain credit for a mortgage even if a sale was made; 3) community pressure on white sellers once it became known that a black was buying. If these were inadequate, the fourth line of defense against black movement was the racial covenant, but, in Indianapolis, there was no one instance where a black got through the other three barriers; no law suits were ever filed because no sales were allowed outside of the permitted sections (Ibid., 24-26).

The custom of setting deadlines, which has previously been discussed, was fully supported by realtors in Kansas City. In 1930, the KCREB completed an extensive study of housing in Kansas City. The report recommended that

> ...a definite boundary line in the Negro district be recognized...and that real estate men lend their encouragement to improvement associations which at present are seeking to keep their districts white (KC Call, June 13, 1930).

The influence of local real estate boards is further illus-

trated in St. Louis. The local board there appointed a Committee on the Protection of Property and directed them to cooperate with improvement associations so that racial restrictions could be maintained (Long and Johnson, 1944:69). One study of St. Louis in the 1940s found that the St. Louis Board was responsible for drafting about 85 percent of the racial covenants in force in the city; the Board maintained a trustee interest in the agreements (Ibid.).

The Shelley decision was widely criticized and opposed by the real estate industry as an infringement upon the free housing market. The decision itself did little to change the minds of most realtors and the way they operated. In fact, they became a more important force in fostering and maintaining segregation. Gerald Seegers, the attorney who represented Kraemer, et al., in the Shelley case, described how the decision would effect realtors in St. Louis.

> The method now being employed here in St. Louis...is to have the Real Estate Exchange [Board] zone the city and forbid any member of the exchange under pain of expulsion to sell property in the white zone to a Negro. If the real estate men refused to participate in the sale, the breaches will at least be minimized to those who deal with each other directly or through a...nonmember of the exchange who could easily be identified and boycotted more or less by all the people to whom the knowledge comes (Voss, 1959:223).

The response of realtor boards to the decision brought about a rash of expulsions in cities throughout the country (Ibid., 224). Some boards even sought a Constitutional Amendment to reverse the decision (McEntire, 1960:246). Although most boards no longer publicly advocate explicit segregation, certainly not discrimination, in 1973, the Florida Real Estate Licensing Commission was

still recommending residential segregation in its handbook for brokers (Sloane, 1974:88). Other boards were attacking every anti-discrimination bill or law as a "wanton invasion of basic property rights" (McEntire, 1960:248). In Kansas City, the Real Estate Board actively opposed all housing legislation that proposed to open up the suburbs to blacks. In the late 1960s when fair housing proposals were being made everywhere, the KCREB publicly campaigned against them, charging that they were a denial of property rights. The Board forced a referendum on the issue in Kansas City, Missouri, and the fair housing bill was defeated. Only the subsequent passage of federal legislation overcame this defeat.

The law has not brought about one important change in realtor practices: the code of ethics is still enforced by informal pressures. The strong belief remains that opening up white neighborhoods would seriously damage a real estate firms reputation (Sewing interview, 1978). Damaging reactions to such actions are expected from both neighborhood residents and from colleagues. The result is a high degree of uniformity both in realtor attitudes and practices. Although explusions sometimes occured. during the 1950s for violating racial codes, such a serious step is rarely needed today; the loss of reputation, lack of cooperation from colleagues, and the potential loss of business is usually sufficient to hold realtors in check (Ibid.).

The commitment of realtors to uphold the social and economic values of the community through the maintenance of homogeneous neighborhoods is a strong one. In 1961, the Advisory Committee from Kansas to the United States Commission on Civil Rights heard

the testimony of one local realtor who insisted that "the preservation of racial, even the religious character of neighborhoods is a valid and important objective of his profession" (1961:160).

The method by which realtors act to accomplish their goal of homogeneity is commonly referred to as "steering," a phenomenon that occurs when whites are shown homes only in white areas and blacks only in black areas. This practice is well recognized both nationally and in Kansas City (Temporary Advisory Committee on Housing Report, 1973:LV). Realtors generally disclaim charges of steering by saying that they act on the wishes of their principal client, usually the seller (Curls, Sewing, and Wimmes interviews, 1978). To operate in a manner that is unacceptable to the social mores of their customers is, they say, simply bad business. Furthermore, they feel no responsibility to crusade for integration (Sewing interview, 1978). Nor do realtors feel guilty for their behavior. They place the burden of guilt on the public: if the seller will readily agree to accept a black buyer, brokers say they will comply. Evidence suggests, however, that the decisions of realtors are made independently of the seller. McEntire wrote in 1960 that there is

> ...abundant evidence that brokers and their boards take an independent view of their responsibilities and will refuse to participate in transactions violating their mores, regardless of the wishes of individual buyers and sellers...there is no recorded instance of any real estate board's announcing that introduction of a minority buyer into a white neighborhood was permissable if the seller is willing (241).

Supporting evidence to this view was provided after extensive hearings were held in 1961 by the USCCR in several major cities. They concluded that real estate brokers continue to adhere to the

policy of single race occupancy, and that

> their views in some cases are so vigorously expressed as to discourage property owners who would otherwise be concerned only with color of a purchaser's money, and not with that of his skin...his policies and practices are among the foremost influences that determine where the various racial and religious groups live.

When the Commission again held hearings in 1970, one broker from Baltimore testified that realtors actually encourage the white preference for exclusivity.

> ...it is not the homeowner who is making the decision to keep a neighborhood all-white for his friends and neighbors, so much [as] the real estate broker who is in business and who still considers it economic suicide to make a sale to blacks in an all-white neighborhood (1974:16).

It is safe to say, moreover, that the attitudes of realtors today have scarcely changed. Robert Moore, Jr., the Executive Vice-President of the Kansas Association of Realtors in 1978, responded to a Kansas City Star editorial entitled "The Right to Buy A House," by stating that

> ...a real estate broker or sales person works as an agent for the seller. I can assure you that if there is racial bias in the sale of a house, the fault lies with the seller and not the agent in 90 to 95 percent of the cases (KC Star, June 9:23).

Another common practice of the real estate industry which has helped maintain segregation (although not used as blatantly in the 1970s) is the process of encouraging and expediting the racial transition of neighborhoods, commonly referred to as "blockbusting." According to Gunnar Myrdal in his 1944 study of racial discrimination, the first foothold by blacks in a white neighborhood was by accident, with no help from realtors. Property was deeded to an absentee landlord who had no interest whatever in the racial make-

up of the neighborhood. Then realtors took over and they were gladly willing to sell to blacks at a profit (636).

Up to a point, realtors generally tried to hold the "line" in fringe neighborhoods against black infiltration. After a black crossed the line, however, unscrupulous real estate agents wrote off the neighborhoods, reversed their tactics, and worked to bring in as many blacks as possible while persuading whites to leave. The Kansas State Advisory Committee to the USCCR reported in 1961 that

> there is little doubt that realtors will generally neither show nor sell a house on an all-white block to a Negro. If, by one means or another, a block is 'broken,' the tendency will be to attempt to convert the entire block to Negro occupancy (160).

Blockbusting has never been publicly condoned by the KCREB, yet until the past few years, it was widely used in Kansas City by realtors and posed a serious housing problem to blacks and whites alike (Davis and Schecter interviews, 1978). One local black realtor that was interviewed openly discussed his involvement in aiding white realtors and sellers to arrange "midnight deals" in neighborhoods undergoing rapid turnover (Curls, 1978). Until the late 1960s or early 1970s, many realtors, black and white, were often unwilling to forego the temptation of individual profit that could be derived from the rapid turnover of property in transitional neighborhoods. As a result, entire blocks of whites in Kansas City were vacated within a few weeks or even days (KC Star, July 22, 1964:1D).

Classified sections of local newspapers have followed the lead of the real estate industry by carrying discriminatory advertising. For years the Kansas City Star has attempted to

separate ads for the black district by advertising residential property "east of Troost," and "west of Troost," a line which today, for the most part, still divides the black and white communities. Property is also advertised "north of 27th Street" and "south of 27th Street" and "north of Brush Creek to 27th Street" and "south of Brush Creek." These streets have long been considered dividing lines. Many blacks rely on the Kansas City Call, which, until recently, advertised in areas only where blacks reportedly were able to purchase housing (City Development Department, KCMO, 1969). Similarly, the Kansas City Kansan advertised property by listing it as "available to anyone," or "for anyone." These designations were separated from the others by dotted lines. In 1966, the Executive Director of the Commission of Human Relations in Kansas City, Kansas, investigated this practice and concluded that the intent was to separate black and white listings (See Appendix B). The Kansan readily admitted that this was their intention.

Still another aspect of race and the real estate industry concerns the exclusion of blacks from professional associations and real estate boards. The National Association has left local board membership up to the local boards, but has recommended, at least until recently, that blacks organize their own boards (McEntire, 1960:249). Consequently, blacks were forced to form their own national board and respective local boards. In Kansas City, blacks were not permitted as members of the KCREB prior to 1968. In the late 1940s, they formed their own board and called themselves "Realtists" (Sewing interview, 1978), a name coined because white boards all over the country protested that blacks

were unfairly categorized as "realtors" along with whites. Sometime after 1968, blacks were able to join the main board in Kansas City, but as of 1973 there were only nine blacks out of 2,500 members (Kansas and Missouri State Advisory Committees to the USCCR, 1973:28), testimony to the racial attitudes that persist within the real estate industry today. The absence, or exclusion, continues to represent a denial of wider business and professional contact which membership on the Board provides. White realtors claim that blacks are free to join (even a few blacks agree) but generally decline to do so. One black realtor, however, says that the reason has to do with the reality that black realtors remain tied to the black housing market making white real estate contacts relatively worthless (Curls interview, 1978). Their absence, nevertheless, prevents needed communication between black and white realtors and the possibility of opening up the white housing market to blacks. Continued exclusion insulates realtors on the basis of race; black views are not shared and realtor codes advocating segregation go largely unchallenged.

Another long standing practice by all realty firms in Kansas City which provides further evidence that segregation will not soon end is the total absence of black realtors working for white firms and white realtors working for black firms. Once again, realtors claim that this is a matter of good business rather than a question of race. To again quote Robert Moore, Jr.: "...real estate companies in Kansas City have a nearly perfect record of segregated hiring. Why? Quite simple--the broker associates himself with people who will be acceptable to the seller and buyer client" (KC Star, June 9, 1978:23). This presents a self-

fulfilling prophecy: as long as there is housing segregation, real estate practices will also remain segregated; more importantly, as long as the real estate industry remains segregated, housing segregation will persist.

CHAPTER 5 - RACIAL COVENANTS AFTER SHELLEY AND BARROWS

The general opinion after Shelley was that even though racial covenants no longer had any legal effect, segregated housing would continue to survive for a long time (Scanlon, 1948:157). This has proven true. In its 1968 report on racial isolation, the USCCR said that

> ...covenants were private agreements to exclude members of designated minority groups, the fact that they were enforceable by the state and federal courts gave them maximum effectiveness...Although racially restrictive covenants no longer are judicially enforceable, they are still used and the patterns they helped to create still persist (21).

A recent law journal article also points out that during the years following Shelley, it was the common belief that purchasers were still willing to pay more for lots in "exclusive" subdivisions which purported to be protected by racial covenants (Maryland Law Review Notes, 1974:403). Furthermore, most laymen-grantees had never even heard of Shelley or Barrows and the average person was therefore hesitant to breach the face of the title deed. The article goes on to say that it was not uncommon to continue recording racial covenants and this acted to re-inforce the notion of the gentlemen's agreement; that is, without lawful racial covenants, the parties involved in housing transactions often relied upon private "understandings." This practice gained its legitimacy through the observance of racial covenants (Weaver, 1948:240). By the time the racial covenant was made unlawful, the gentlemen's agreement had become so deeply engrained throughout our country that it was a powerful exclusionary custom. In hearings before the USCCR

in 1961, the conclusion was that Shelley did not eliminate de facto segregation in housing. Rather, the Supreme Court simply relegated the restrictive covenant to the enforcement by gentleman's agreement, a practice which they found to be widespread.

Girard Bryant, a well known retired black educator and long-time resident of Kansas City, Missouri, poignantly described the power of gentleman's agreement (Interview, 1978). Bryant and his wife were close friends with a white couple living at 55th and Main in Kansas City, Missouri. They often shared dinner at each others home and so on. When the white couple put their house up for sale in the late 1960s, another black couple tried to purchase it. Bryant's white friends could still not go through with the sale due to their fear of its effect on the neighborhood and what everyone would think of their actions.

Racial covenants after Shelley caused other problems, as well. During the 1963 hearings for the Kansas Conference on Discrimination in Real Property, Samuel Jackson, the then President of the Topeka Branch of the NAACP, testified that even though restrictive covenants were unenforceable, they still served to harrass blacks who wanted to buy property, primarily because most property still has the restrictive covenant in the chain of title. Jackson testified that

> many title insurance companies in the state, and several of the mortgage lending agencies in the state require Negro buyers to...file a quiet title...this runs anywhere from $250 to $300, or $400, depending upon what all is involved, or to post a bond to assure that there will be money available to the title insurance company, or to the mortgage lending agency, to defend a suit if one is brought by someone who will want to try to enforce the particular covenant...legislation is needed to wipe out any legal effect that covenants may have or to prevent suits...that are brought solely for the purposes of harrassment.

In this regard, Title companies continued to abstract racial covenants until November 26, 1969, when the Civil Rights Division of the Justice Department brought pressure on them by writing each company a letter stating that the continuance of such actions would violate the Civil Rights Act of 1968 (Plager, 1970: 138). This did not, however, remove racial clauses from the thousands of deeds that were previously recorded; clauses which remain on much of the residential property today.

Another question Shelley did not clearly answer was the presence of "reverter" clauses in many of the covenants. As described earlier, if a covenant is violated land reverts automatically to the original owner. Shelley created a conflict because the Court ruled that even though racial restrictions were unenforceable, the reverter clause was still operational; it could not, however, have race as its motive. Blacks nevertheless still had to demonstrate that the reverter clause was used against them because of their color (Jackson testimony, 1963). In other words, the burden of proof was on blacks.

The Charlotte Park and Recreation Commission v. Barringer case in 1955 illustrates how the courts view of revertor clauses might cause concern to blacks (88 S.E.2d 114 (1955)). The grantor gave the city of Charlotte a golf course and the deed contained a racial restriction prohibiting blacks. The question the courts had to answer was whether the land would revert back to the grantor if the course was used by blacks. The court ruled that since the land reverted automatically, there was no "state action" involved in the discrimination. Thus the Shelley doctrine was again circumvented. The court

had made a clear distinction between the automatic reverter clause and a racially restrictive covenant.

THE 1968 FAIR HOUSING ACT, JONES AND MAYERS

Another pressing question was left unanswered by Shelley and Barrows: the conflict between the state's responsibility for private discrimination under the equal protection clause and the rights of privacy and free association or non-association under the 14th Amendment. There was general agreement that Shelley clearly could not prevent individuals from barring blacks from purchasing a home (Henkin, 1962:501). In other words, Shelley did not prevent private or individual discrimination. It took more than 20 years before the uneasy relationship between discrimination and voluntary racial covenants was seriously addressed by the government and the courts.

First came the passage of the 1968 Housing Act. Among other things the Act prohibited the

> ...mak[ing], print[ing] or publish[ing]...any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion or national origin...(42 U.S.C 3604(c) (1970)).

The question here is whether the courts would view a racial covenant as a "notice, statement or advertisement" which falls under the Act. No clear answer is provided in the language of the Act, which was directed at the real estate industry rather than individuals; thus private discrimination was still possible.

The U.S. Supreme Court reviewed this question in Jones v. Mayer, (392 U.S. 409 (1968)). On September 2, 1965, Jones, et al., filed a complaint in the District Court for the Eastern

District of Missouri, alleging that Mayers, et al., had refused to sell them a home in the Paddock Woods community of St. Louis County for the sole reason that Jones was black. Jones relied on Section 1982 of the 1866 Civil Rights Act which declared that

> all citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property (42 U.S.C. 1982).

The U.S. Supreme Court agreed that

> Sec. 1982 bans all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the thirteenth Amendment.

The Court sought, therefore, to ban "private" action that allowed property to be placed on the market for "whites only" thus giving them a right which was denied to blacks.

Subsequent decisions upheld the Jones ruling. In Lee v. Minnock, it was held that Sec. 1982 has broad reach and prohibits all racially motivated discrimination in the sale or rental of property, whether private or public (417 F.Supp. 436 (1976)). The ruling was further broadened in Fair Housing Council v. Bergen County Multiple Listing Service, (422 F.Supp. 1071 (1976)). In this instance, the black plaintiffs successfully argued that multiple listing services and racial steering constitute a sufficient cause of action under Sec. 1982. Sec. 1982 was narrowly viewed, however, in Drain v. Friedman (422 F.Supp. 366 (1976)), when the Court would not impose an affirmative duty on a private landlord to accept low-income tenants absent evidence that the landlord's motivation is racial rather than economic in origin.

Despite extending the meaning of Shelley, the Jones Doctrine and the 1968 Housing Act failed to quiet discussion over the continuing presence of racial covenants in the record books. Did their presence, though unenforceable, still inhibit black home buyers? Do they remain a psychological barrier of discouragement to black movement into white areas? Do they tend to encourage further or continued white resistence? Finally, should the courts consider the adverse psychological effect on blacks who are exposed to such demeaning language?

The Supreme Court addressed these issues in a couple of non-housing cases in the early 1960s: Lombard v. Louis (363 U.S. 267) and Peterson v. City of Greenville (363 U.S. 244) The Court ruled in these cases that

> the mere existence of Jim Crow laws may have a coercive effect upon present private choice, and that, in a social setting where the populace is unlikely to consider them as 'invalid,' it is not unfair to presume they have this effect (Fiss, 1964-65:586).

Then in 1968, a three-judge panel applied the same reasoninging they enjoined the keeping of separate tax records by race, stating that "the keeping of public records according to race, absent a legitimate public purpose...is itself...an indignity upon the minority group..." (Bryant v. State Board of Assessment (293 F. Supp. 1379). None of these cases, however, concerned racial covenants directly, but in 1972, the same questions were raised in that regard in Mayers v. Ridley (465 F.2d 630).

In Mayers, a group of homeowners in Washington, D.C. sought an injunction against the recording of deeds containing racial covenants. They also asked that all deeds which "incorporate" prior covenants by reference be stricken from the record. Mayers charged that the government was involved in, and encouraged, racial

discrimination because the files of the recorder's office are open to the public, are free of charge, and provide the contents for every deed. In effect, Mayer's claimed that the government converted a private act (the writing and recording of a racial covenant) into a public act. In doing so, the government was publicly endorsing the offensive language found in the majority of the covenants on file at the recorder's office. Central to Mayer's argument was whether the presence of racial covenants continues to inhibit blacks from moving into certain areas of a city.

Mayers further argued that when a person buys a home, a trip to the recorder's office is made to check the title of the grantor; when the purchase is concluded, another trip is made to have it recorded, gain priority, and protect against future conveyances by the grantor. In this way Mayers felt the recorder furnishes a vehicle by which racial predjudice is promulgated. He does this by putting the government seal on racist documents and this manifestly encourages private discrimination in violation of the 14th Amendment.

The recorder claimed that the exclusion of the restrictive covenant is not required by the Fair Housing Act of 1968 in that there was no "sale or rental of a dwelling" and also that the recorder is purely a ministerial officer (Ibid.,644). The district court agreed and dismissed Mayer's complaint. The District Court of Appeals affirmed, but on rehearing en banc, the full Court rejected the claim that homeowners suffered no harm on account of the "void covenants. The Court reviewed the intention of the U.S. Congress in passing the Fair Housing Act and determined that their intention was to

create a "national policy of open housing that would greatly facilitate movement of people free from the artificial barriers of racial restrictions" (Ibid., 564).[7] Consequently, the Circuit Court reversed and on remand ordered the recorder of deeds to place on the cover of every deed volume (where hundreds of deeds of all types are recorded) a label stating that "racial covenants are null and void and illegal under our laws." Due to the impracticality of handling millions of documents, the Court apparently did not wish to make the recorder rescind each individual covenant, as Mayers had hoped, or provide that all prior covenants be re-recorded on the condition that they expressly exclude racial restrictions.

It would appear that Mayers answered any remaining questions left over from Shelley, Barrows, the Housing Act, and Jones, yet one legal writer feels that it did not. Burns believes that the state could have argued that because so few people discover the offensive language in their covenants (for example, how many people actually go to the trouble to check them?), the effect is insignificant (Burns, 1972:159). Secondly, Burns wonders if the racial clause could void the entire deed and therefore not provide "constructive notice" to purchasers, thus leaving them unknowingly subject to future lawsuits. On the other hand, could the offensive racial clause be treated as void and read out of the deed, as was done prior to Mayers as a result of Shelley (Ibid.)?

CHAPTER 6 - RESULTS OF THE SURVEY OF RACIAL COVENANTS

An explanation was given in the introduction regarding the most effective method of illustrating the coverage of racial covenants in the KCMR. The following assumption was made: if but one dwelling within a subdivision was racially restricted, then the entire subdivision was considered restricted. The first impression may be that this is an extreme assumption. It does raise the obvious question: how could blacks be excluded from unrestricted housing within a subdivision that contained only a few racial covenants, perhaps only one?

The rationale for the assumption is plausible for several reasons. First, it is well documented that blacks were acutely aware of the existence of racial restrictions throughout white areas, as noted in the foregoing pages. They were also aware that law suits were filed to enforce the restrictions. Of equal importance is the fact that they could not be certain as to the exact location of the restrictions without checking the title deeds to each piece of property. There was no simple way to communicate this information to black home buyers. Most people found out about housing opportunities through newspaper ads, realtors, or word of mouth. For blacks, such information was restricted to black locations with one possible exception. As Robert Weaver concluded in 1948, blacks often found willing white sellers in transitional areas who were not deterred by racial covenants; lawsuits occurred when white neighbors cared and had no intention of leaving the area (239). Information that blacks were excluded came quickly to those who sought housing in all-white neighborhoods.

Secondly, the courts were not at all clear regarding what constitutes a "white district." The courts vaguely discuss "neighborhoods," "sections," and "districts." Normally these definitions pertain to only a few blocks of houses. The survey for this thesis is concerned with subdivisions, which can consist of only a few homes or several hundred. The majority view of the courts in Missouri, and elsewhere, was that 100 percent of the signatures in a "district" were not needed to achieve complete coverage of the restrictions. The more important consideration was always the number of white people living within the district; in other words, as long as the district was ruled a white district, it was considered a restricted district. Once the conditions began to change, as in transitional areas, the courts would say at some point, that it was a "Negro" district. The implications of this are clear: the only areas not restricted to black occupancy were the areas in which blacks were already living, or those neighborhoods bordering the black district. Finally, the mere fact that the courts were likely to rule unfavorably or that their position was uncertain, at best, was probably enough to dissuade many blacks from testing new neighborhoods, particularly those removed from the black section.

Third, in the absence of covenants, blacks were persuaded not to enter white residential areas with the hope of finding housing because of intense racial hostility toward those who attempted it. At the same time, most of the violence occurred in transitional neighborhoods where covenants and other barriers to black movement had broken down.

Fourth, restrictions on housing were but one means of

exclusion. As described earlier, each step in the search for housing in white areas was met by formal and informal racial agreements barring black occupancy. Realtors would not show them homes; lenders would not provide mortgage loans; community pressure prohibited sales. In short, numerous obstacles stood in the path of black residential movement eliminating any chance of finding housing in an unrestricted location.

Lastly, and perhaps most importantly, the conclusion of this thesis is in agreement with what Robert Weaver wrote regarding the coverage of racial covenants more than 30 years ago.

> Much time has been wasted in attemping to prove that all housing not occupied by Negroes is covered by racial covenants. This is not true. It is, in fact, not very important. The significant thing is the pattern of coverage of restrictive agreements (1948:255).

In this respect, the "pattern of coverage" of restrictive agreements in the KCMR is as follows. The writing of racial covenants was first used in exclusive housing developments and is an upper-class innovation. The custom quickly filtered down to middle-income neighborhoods that were seeking "respectability," and then eventually reached low-income subdivisions, as well. All of the desirable "upper-class" housing surrounding black sections was effectively covered by racial covenants. This includes such neighborhoods as Hyde Park, Coleman Heights, Valantine, etc., mostly to the west of the main black section, the Bowery. Middle class neighborhoods were not completely covered, but were also closed to blacks because of intense racial hostility and strictly observed racial agreements within the real estate industry and mortgage lending institutions--all of which eventually broke down under the increasing need for black housing.

Generally, two basic patterns of coverage occurred in the KCMR. One type was written by individual homeowners and neighborhood improvement associations. A second type was written by developers and large land owners in the rapidly growing suburbs. Each method, though sharing the same objective, had different characteristics. The first type was typically written in response to potential black movement in middle class neighborhoods abutting black sections. The greater the perceived threat, the greater the number of restrictions. Although the covenants in these areas were ultimately unsuccessful in holding back black movement, they were successful in funneling the movement into housing where the least resistance was met. On the other had, areas that were the most heavily restricted, like Santa Fe Place, were not so easily penetrated, even though in the direct path of black movement. Blacks were thus inclined to move in a block by block fashion to the older, least desirable housing, with scattered restrictions preceeding this movement. The most intensive campaigns of improvement associations occurred in such neighborhoods.

The second type of restrictions, written by developers, were spread over a much greater land area. All of the homes in a subdivision were included, often encompassing entire communities. Prairie Village, Roeland Park, and Leawood are good examples. Interestingly, these covenants were not inspired by the fear of black intrusion, but instead by the policies of lenders, realtors and developers. The restrictions were recorded before any of the occupants had even moved into the homes. Although J.C. Nichols used this approach very early, it did not truly begin to

flourish until around 1935 and particularly after WWII. The central characteristic of this type of coverage is that the homes were new when the restrictions were imposed and usually far removed from the neighborhoods experiencing any real threat of black infiltration. Generally, covenants of this type blanketed all of northeast Johnson County and the southwest corridor of Kansas City, Missouri, extending south from the Plaza, Rockhill-Nelson area, west of Troost to State Line where the Johnson County, Kansas, restrictions were joined. Much of this area is covered by J.C. Nichols developments. By the 1940s, he had developed 7,500 acres of residential housing with the southern boundary extended to 79th Street (Brown, 1978:176).

The significance of the type of restrictions written for suburban housing is illustrated by Table 6 , on the following page, compiled from a list of plats recorded from a three county area (Jackson and Clay Counties in Missouri: Johnson in Kansas) during the period of 1930 to 1947. The following conclusions were derived from the data:

1) the majority of the plats (76%), in the three county sample contained racial restrictions. Particularly noteworthy is the 96 percent figure for Johnson County.

2) plats which contained racial covenants comprised the majority of acreage for all recorded plats (82%). Again, Johnson County had an unusually high amount (96%). This tends to substantiate the pattern of large developments being blanketed with restrictions in the 1940s.

3) the average acreage for restricted plats is twice as large as that for unrestricted plats. Clearly, the practice of resrict-

TABLE 6 - RECORDED PLATS, 1930 to 1947: A COMPARISON OF RESTRICTED AND UNRESTRICTED PLATS FOR JACKSON, CLAY, AND JOHNSON COUNTIES.

	JACKSON COUNTY	CLAY COUNTY	JOHNSON COUNTY	TOTAL ALL COUNTIES
- Total plats recorded	221	48	154	423
- Number of plats without racial restrictions	83	14	6	103
- Number of plats containing racial restrictions	138	34	148	320
- Percentage of plats filed containing racial restrictions	62 %	71 %	96 %	76 %
- Total acreage of all plats	3,322	1,086	3,105	7,513
- Total acreage of plats without racial restrictions	1,163	138	82	1,383
- Total acreage of plats containing racial restrictions	2,160	948	3,023	6,131
- Percentage of acreage without racial restrictions	35 %	13 %	3 %	18 %
- Percentage of acreage containing racial restrictions	65 %	87 %	97 %	82 %
- Average acreage of unrestricted plats	14.01	9.85	13.67	12.51
- Average acreage for restricted plats	15.65	27.87	19.64	21.05

(Source: Plat Books at the Recorder of Deeds Offices for the restpective Counties.)

ing large tracts of land had become much more common during this period.

It is important to add that Table 6 does not include most of the year 1947 and none of the years thereafter through 1950, a period of intense building activity in the KCMR, especially in northeast Johnson County and southwest Kansas City, Missouri. The data regarding racial restrictions would therefore undoubtedly be even more dramatic, although the basic patterns would most likely remain the same.

The same pattern of racial restrictions blanketing newer subdivisions was also found in a survey compiled in New York in 1947. Of 315 new developments in Queens, Nassau, and Southern Westchester, it was found that the incidence of racial covenants in the older parts of the city were low, but newer subdivisions and suburban areas were well covered.

> Race covenants applied to a few small developments; but they were frequent on the large-scale building operation. Only eight percent of the developments with less than 20 homes were restricted against Negroes, compared with nearly one half (48%) of the subdivisions of 20 homes or more. Among large developments of 75 properties or more, five-sixths were race restricted...No less than 56 percent of all homes checked were forbidden to Negroes (Dean, 1947: 428).

The conclusion of this thesis is in agreement with the New York findings: suburban subdivisions in the KCMR were significantly larger than those adjacent to the black section and they were much more likely to be heavily covered with racial restrictions.

Information from surveys taken in other cities to determine the coverage of racial agreements is sketchy. Those available, however, verify the KCMR survey findings. For example, surveys in Columbus, Ohio, and Chicago found that the greatest concentra-

tion of racial restrictions was in middle-class areas surrounding "black-belts," with a tendency toward widespread coverage in newer suburban subdivisions (Weaver, 1948:246). Much residential property and some rather large vacant sites were not restricted, however. Data supplied for the 1947 Tovey v. Levy racial covenant case in Chicago support these findings. For the 155 sections or square miles surveyed in Chicago for the case, the following conclusions were reached (Ibid.):

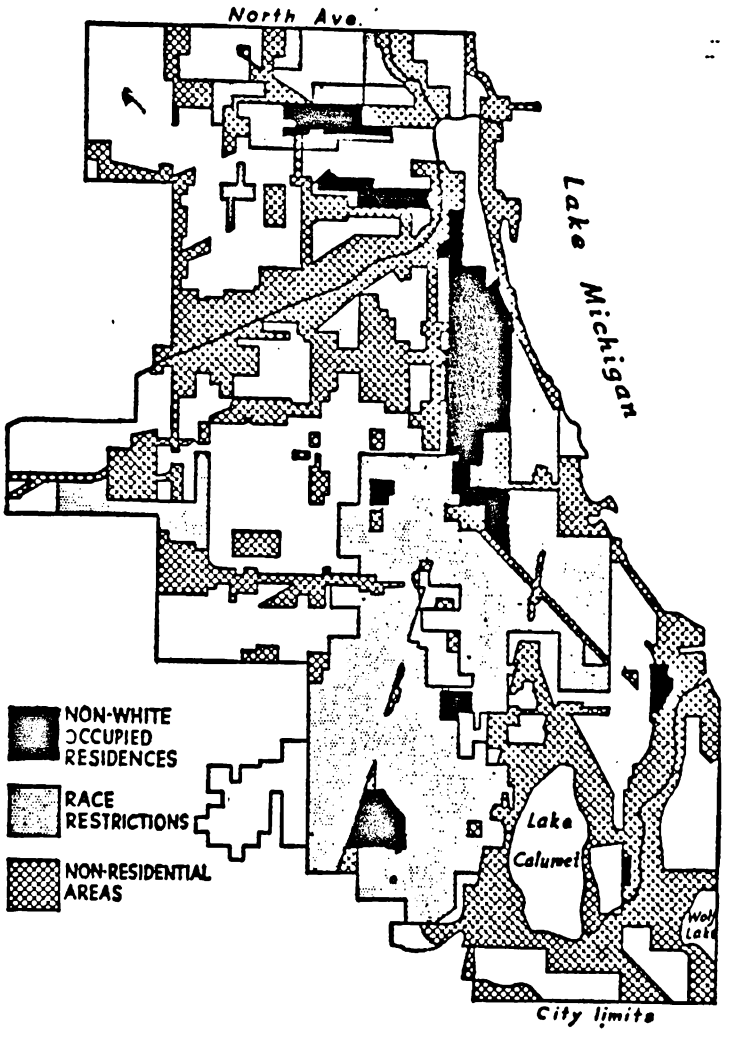
- 70 sections were non-residential
- 85 sections were residential
- nine and one half sections were occupied by blacks
- 37 1/2 sections were assigned to residential use free of racial covenants.
- 38 sections assigned to residential use were restricted against black occupancy

In summary, 44 percent of all residential land was restricted, while blacks occupied only 10.6 percent of the residential land. Figure 7 on the following page reveals this pattern.

By using the Chicago method of analysis for Kansas City, Missouri, the following data provide an interesting comparison. Quarter sections are used rather than full sections. Out of the total of 272 quarter sections surveyed (68 square miles), the following conclusions were reached:

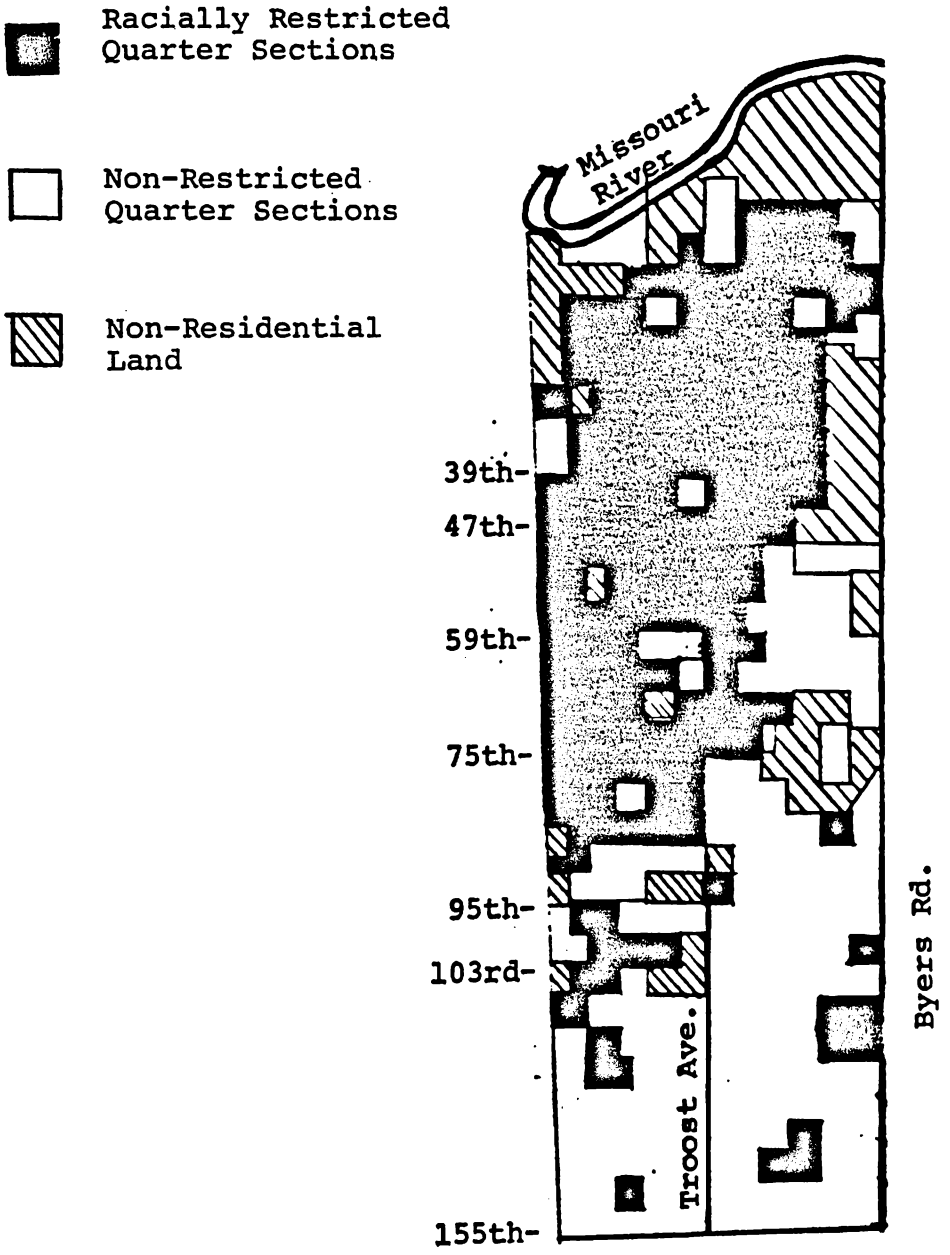
- 62 quarter sections were devoted almost exclusively to industrial or commercial use.
- 14 quarter sections were occupied almost exclusively by the black population.
- 52 quarter sections were non-restricted residential property.
- 158 quarter sections were restricted against black occupancy.

FIGURE 7 - DISTRIBUTION OF RACIAL COVENANTS IN CHICAGO, ILLINOIS.



This chart is adapted from a map prepared by the Chicago Branch of the National Association for the Advancement of Colored People and based on a survey made by Loring B. Moore.

FIGURE 8 - DISTRIBUTION OF RACIAL COVENANTS BY QUARTER SECTION IN KANSAS CITY, MISSOURI:



The Kansas City, Missouri data may be summarized as follows: 75 percent of the total residential land was restricted, while only four percent of the residential land surveyed was occupied by blacks.

Figures 9 through 13 are county maps that illustrate the final results of the six county metropolitan survey. It should be noted that the construction of the maps was based upon the period in which the racial restrictions were written, roughly 1914 to the early 1950s. The last restrictions were written in the late 1960s, however, and they, too, are included. Many of the areas that indicate residential development, especially in downtown Kansas City, Missouri, are now commercial. They are nevertheless considered here as residential areas. Similarly, many of the areas that are called "non-residential" on the maps do not accurately represent development as it appears today. Nor do the maps accurately portray development as of 1950. Instead, they represent residential growth and racial covenant coverage as it would appear by combining a 40 year period. This accounts for the rather heavy coverage of restrictions indicated for some locations where housing does not exist today; naturally, industry and commerce have expanded. Also, note that many of the areas in which blacks lived, as of 1950, were covered by racial agreements.

Most of the conclusions from the survey have already been discussed. Special attention should be given to the maps depicting Johnson County and Jackson County and the areas running along State Line Avenue where "exclusive" Nichols developments dominated. These include the Country Club District, Mission Hills,

FIGURE 9 - DISTRIBUTION OF RACIAL COVENANTS IN JACKSON COUNTY, MISSOURI, KANSAS CITY PORTION

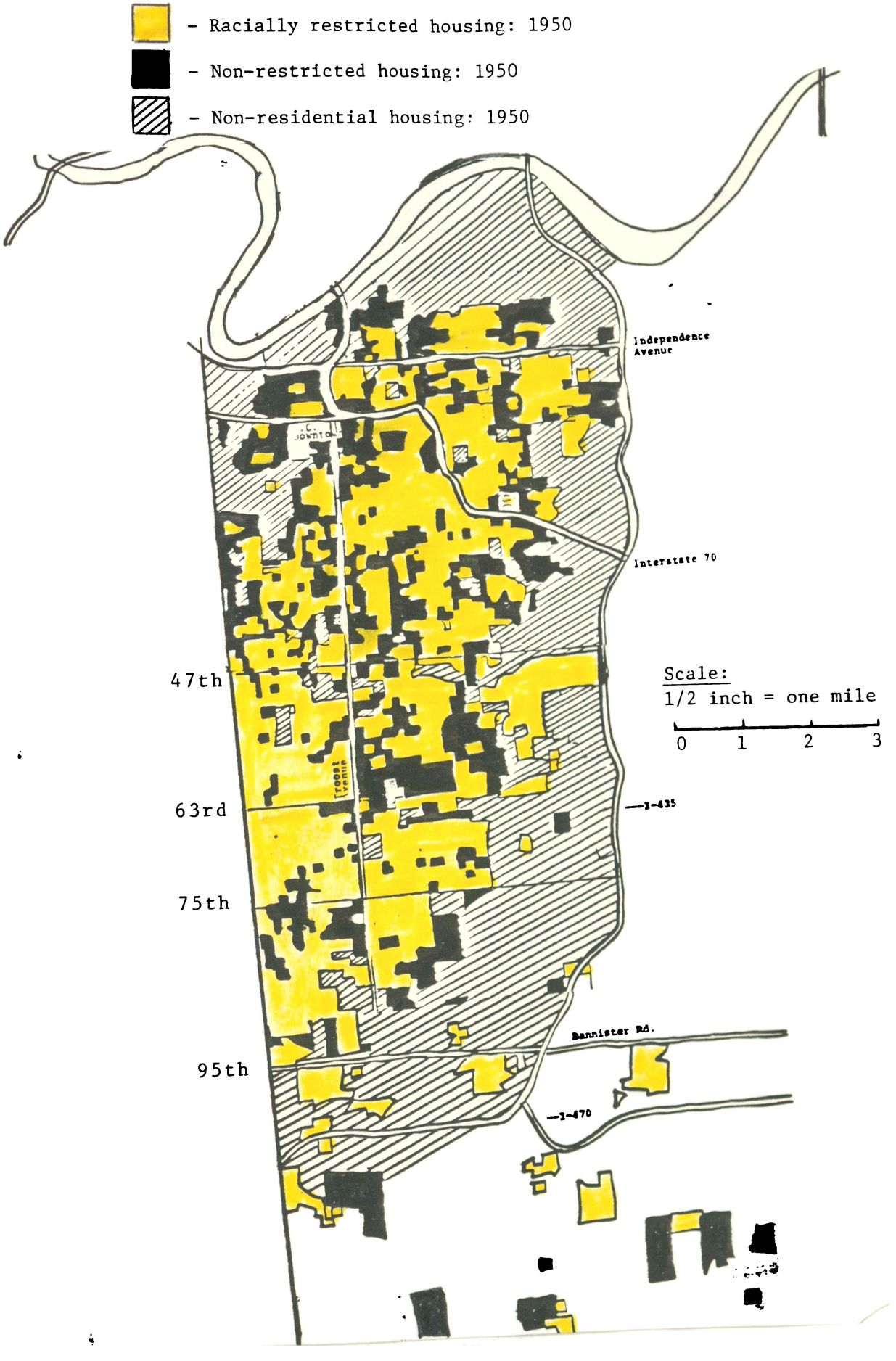


FIGURE 10 - DISTRIBUTION OF RACIAL COVENANTS IN JACKSON COUNTY, MISSOURI, INDEPENDENCE PORTION

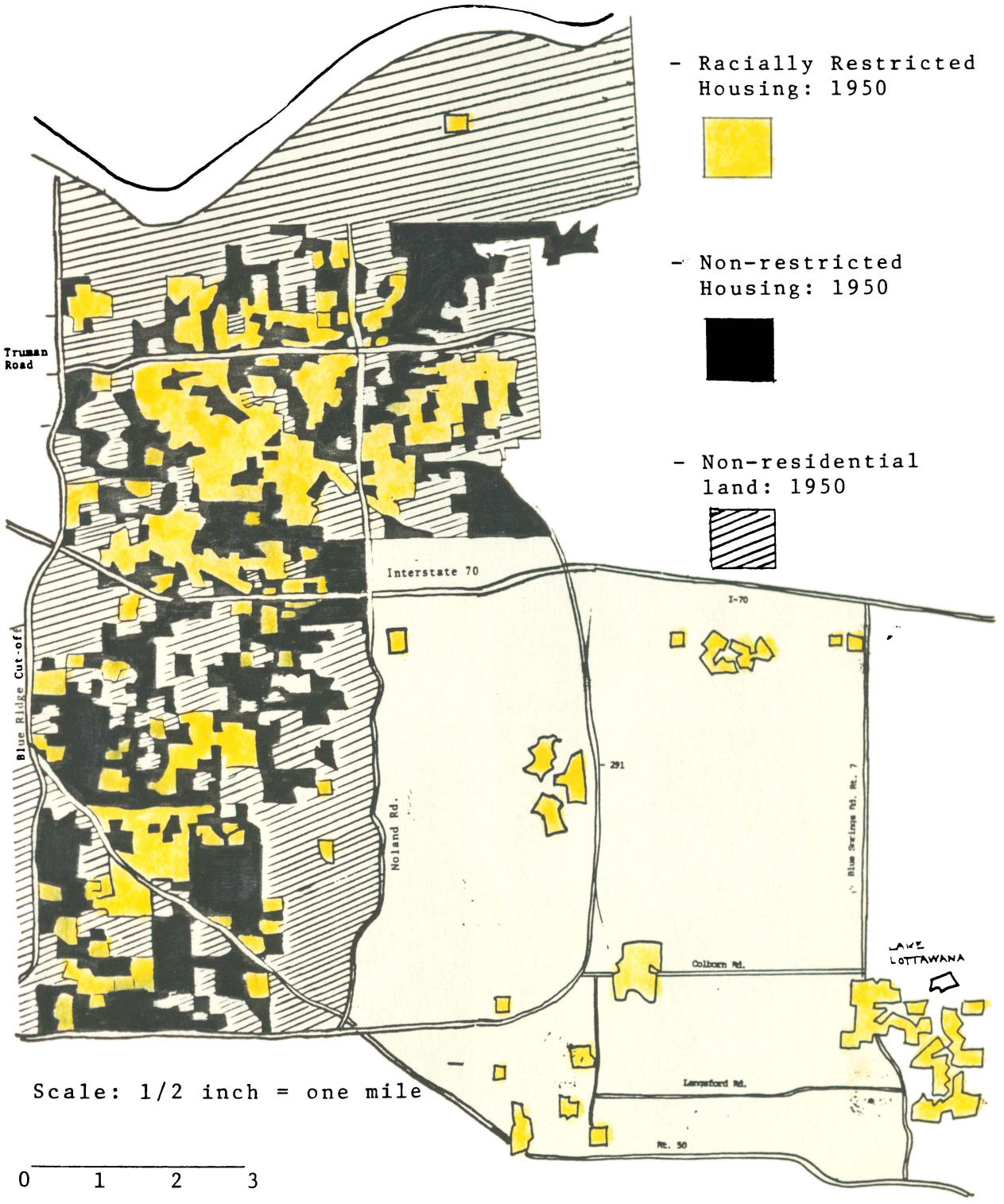
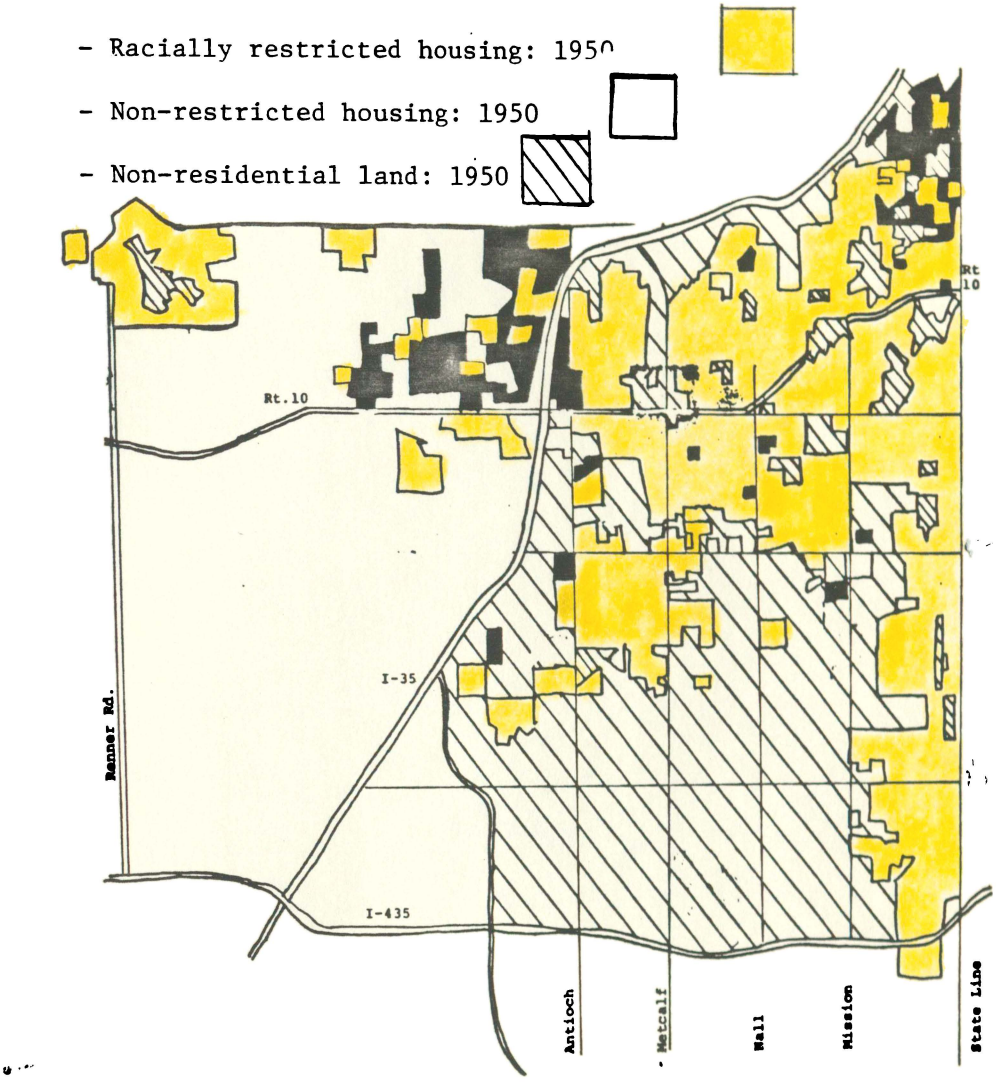


FIGURE 11 - DISTRIBUTION OF RACIAL COVENANTS IN JOHNSON COUNTY, KANSAS



Scale: 0 1 2 3

1/2 inch = one mile

FIGURE 12 - DISTRIBUTION OF RACIAL COVENANTS IN WYANDOTTE COUNTY, KANSAS

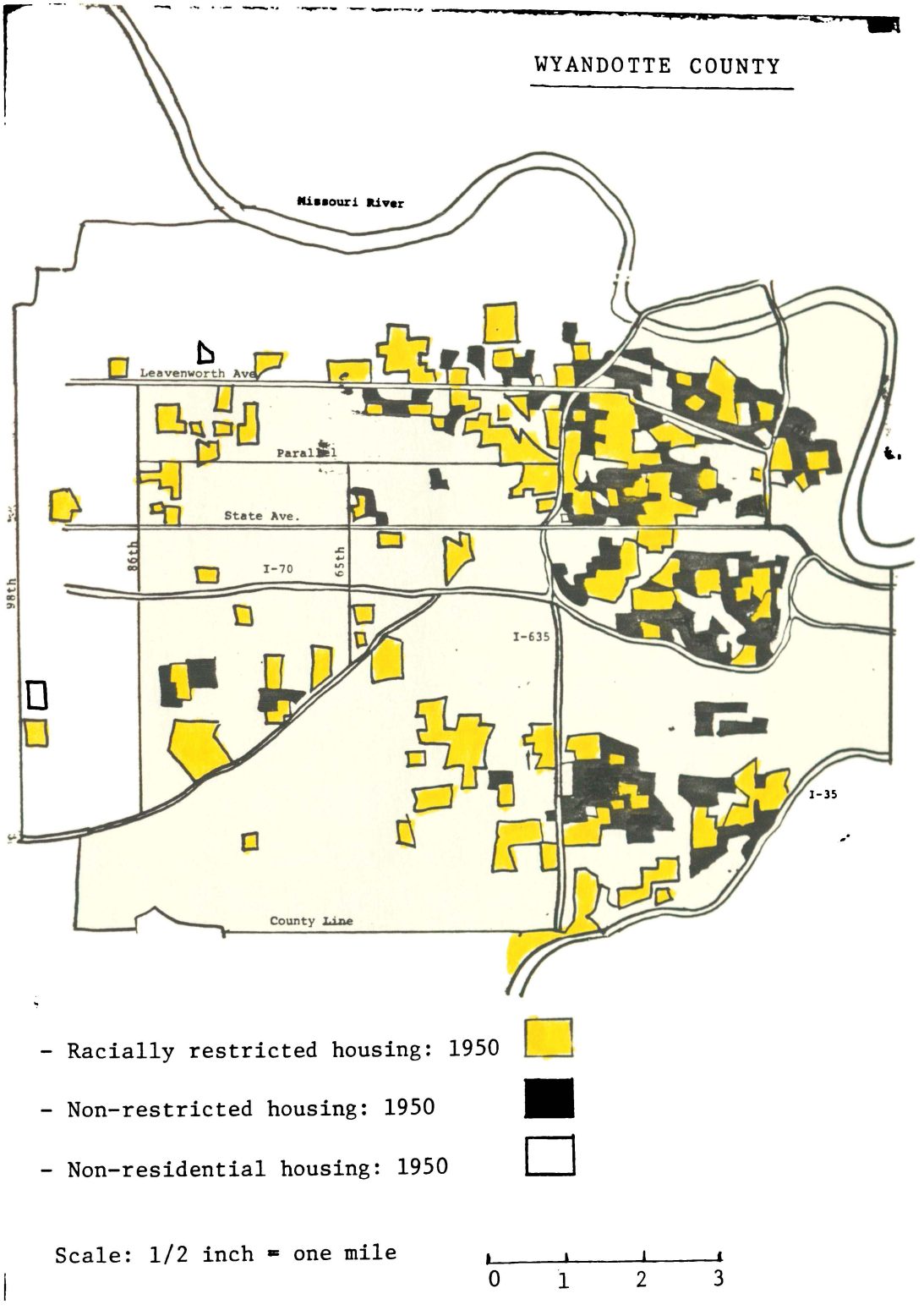
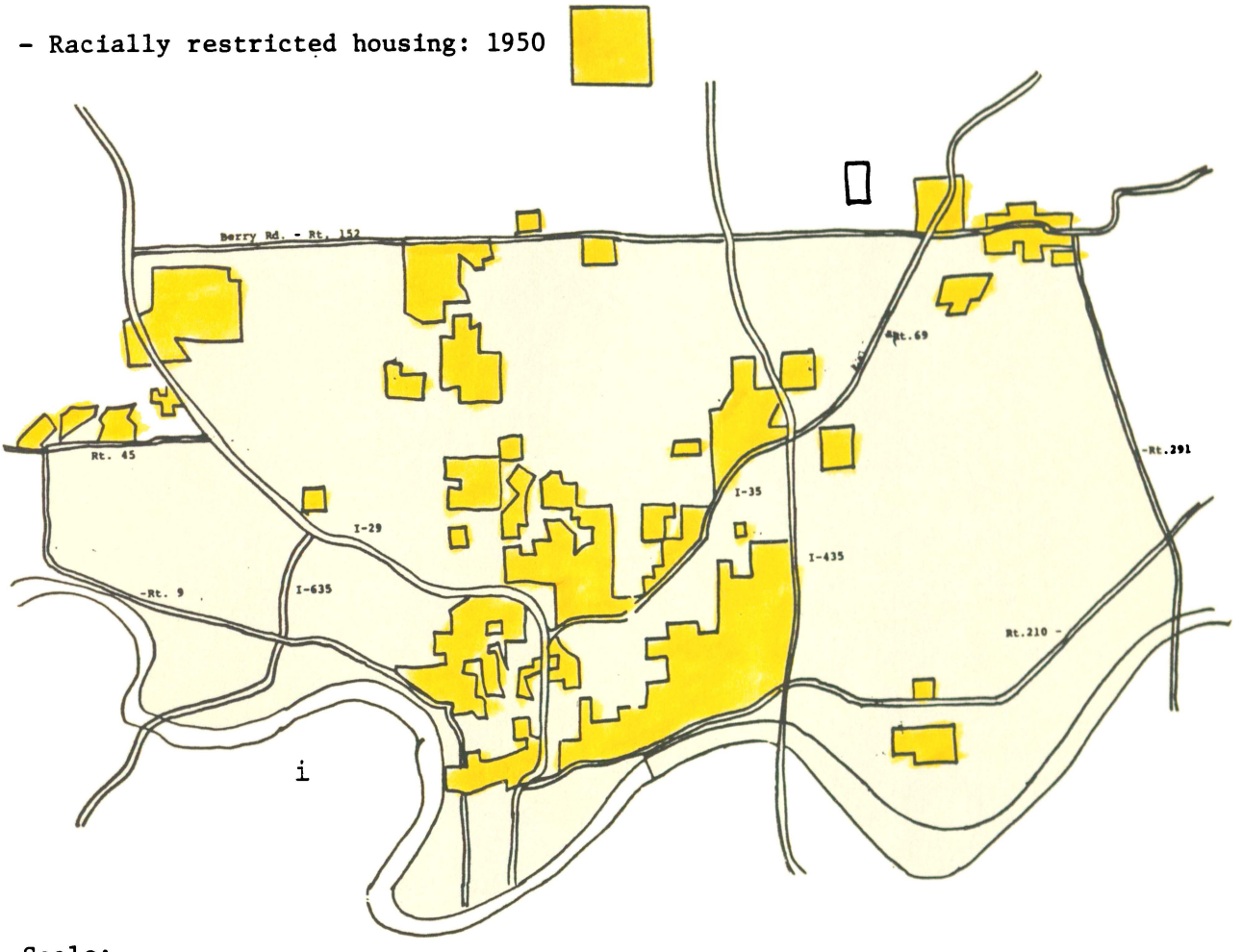


FIGURE 13 - DISTRIBUTION OF RACIAL COVENANTS IN CLAY AND PLATTE COUNTIES, MISSOURI

PLATTE AND CLAY COUNTIES

- Racially restricted housing: 1950



Scale:

0 1 2 3

1/2 inch = one mile

and Leawood (developed by the Kroh Brothers). These communities provided a formidable economic barrier to blacks, acting as a buffer to other less expensive homes located in Praire Village, Roeland Park, Shawnee, and Overland Park. Although the homes here were more modestly priced, they were totally restricted, all-white communities.

After Shelley blacks began to move across formerly forbidden boundaries in record numbers. Surveys taken three years after Shelley in 1951 indicate that a sizeable number of blacks had moved beyond the 1948 boundaries separating blacks from whites in both Chicago and Detroit (New York Times, January 22, 1951 and April 15, 1951). The same pattern was occurring in other cities, including Kansas City, Missouri, where blacks were rapidly moving southeastward, the direction of movement that still exists today. Segregation, however, did not change and blacks were not entering suburban locations. Past legal segregation remained fixed and stabilized. In fact, the level of segregation is greater today than it was in 1950 (USCCR, 1975). Blacks were continuing the block by block pattern of movement. This is illustrated in figure 14 through 16 which compares the 1950 location of blacks in Kansas City, Missouri, with those of 1960 and 1970. Note the distinct growth of the black district and its failure to penetrate Troost Avenue. Figures 17 and 18 compare black movement in Kansas City, Kansas, in 1940 with 1968 and reveal the same characteristics found in Kansas City, Missouri; movement is basically to the northeast.

Why have blacks not moved into suburban locations, particularly Johnson County, in greater numbers? The conclusion of

FIGURE 14 - BLACK LOCATION IN KANSAS CITY, MISSOURI: 1950

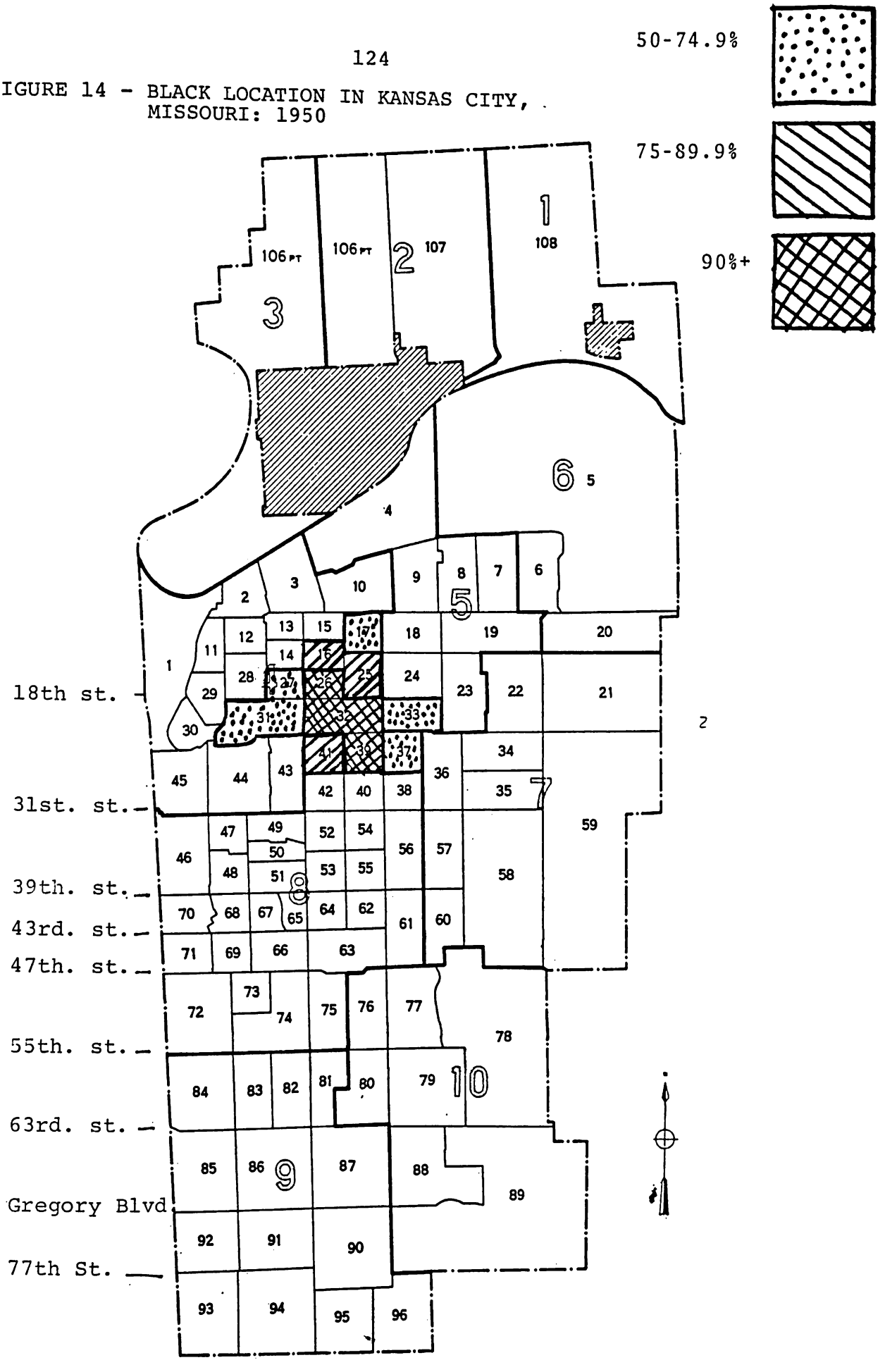


FIGURE - 15 - BLACK LOCATION IN KANSAS CITY, MISSOURI: 1960

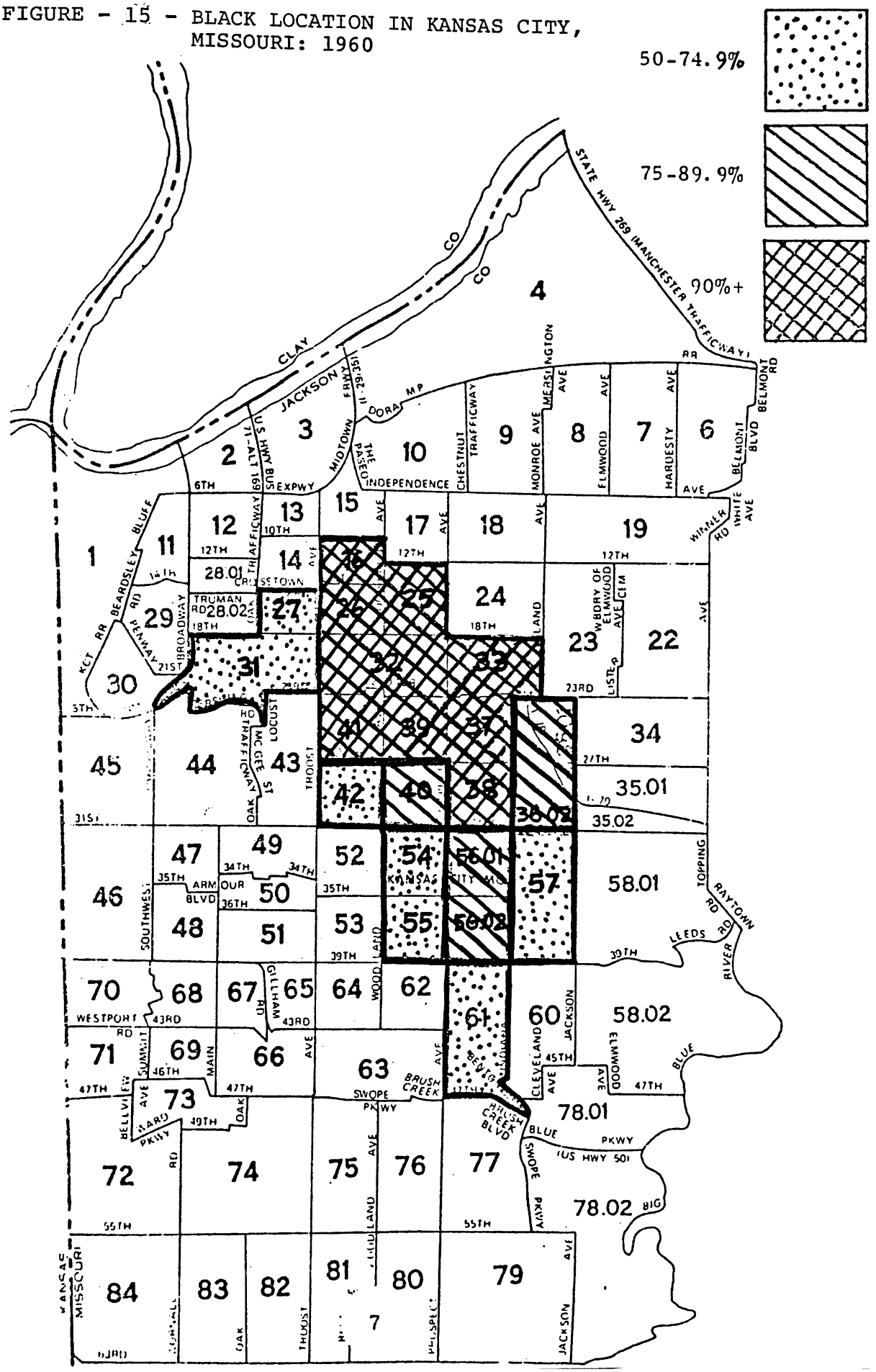


FIGURE - 16 - LOCATION OF BLACK POPULATION IN KANSAS CITY, MISSOURI: 1970

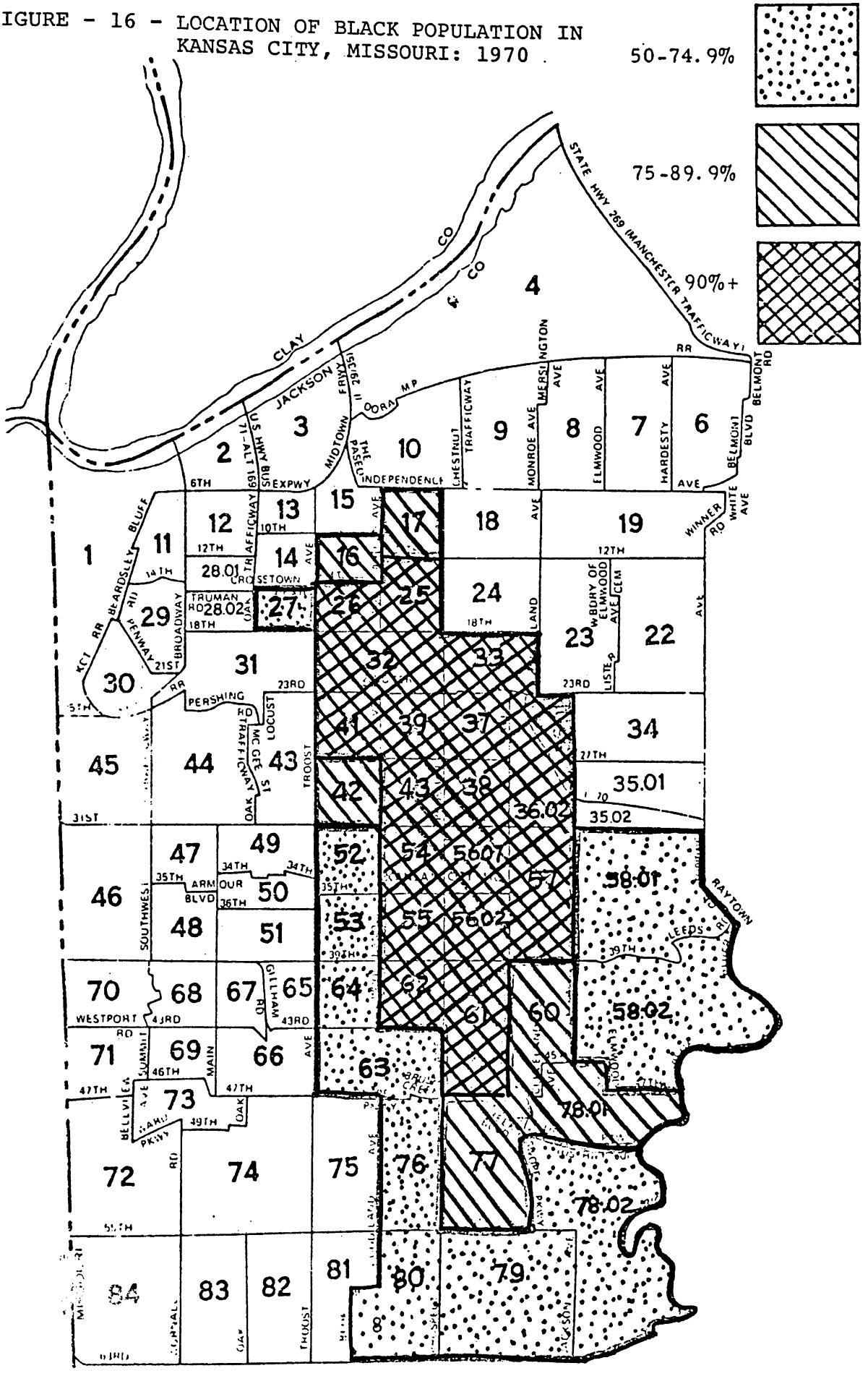


FIGURE 17 - BLACK LOCATION IN KANSAS CITY, KANSAS, 1940

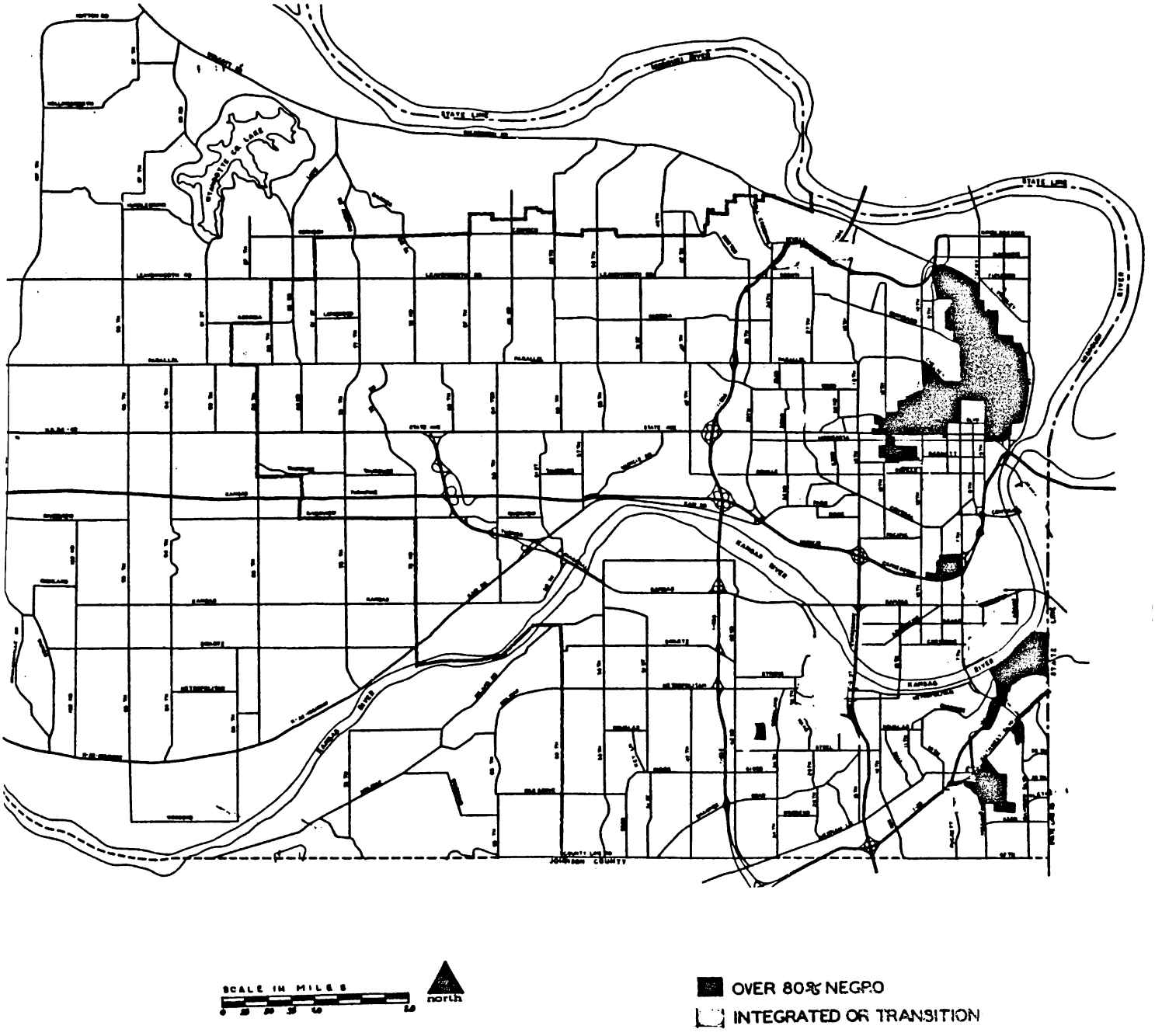
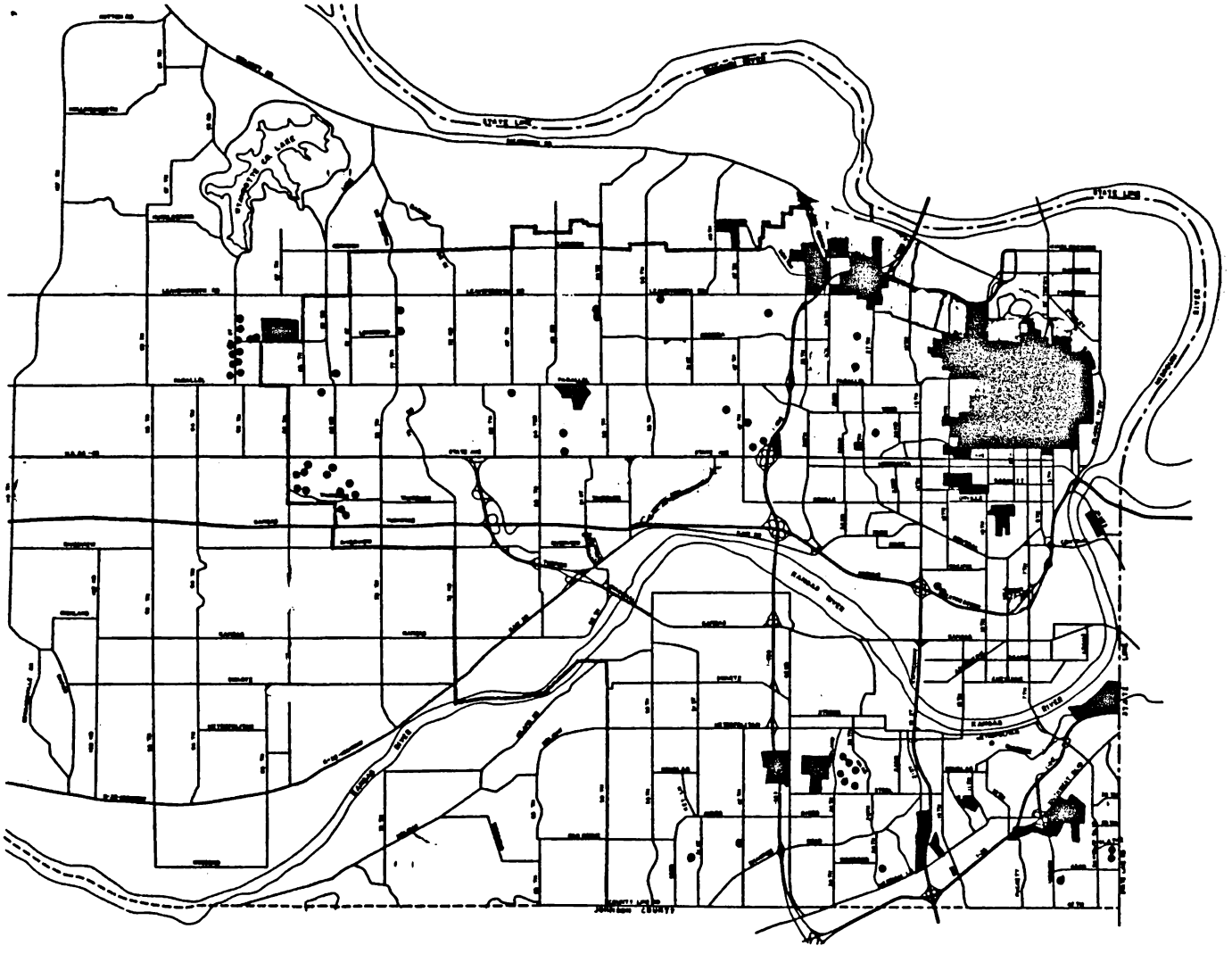
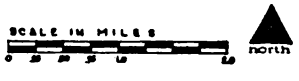


FIGURE 18 - BLACK LOCATION IN KANSAS CITY, KANSAS, 1968





LEGEND

OVER 80% NEGRO
INTEGRATED OR TRANSITION
SINGLE FAMILIES

this thesis is that the effect of racial agreements, both on individual property deeds and within the policies of the various actors involved in the housing industry, continued to act as the principal barrier to black suburban movement after 1950. Since Johnson County received the greatest population growth in the KCMR from 1950 to 1980, it provides the most useful example illustrating the continuing effect of racial agreements.

Sometime after WWII, whites began to leave Kansas City, Missouri, and many of them were moving to Johnson County. Table 7 , below, shows the population growth for Kansas City, Missouri, from 1900 to 1970. In order to maintain constancy of geographical boundaries over the years, annexations, which largely occurred after 1950, are not included.

TABLE 7 - KANSAS CITY, MISSOURI, POPULATION: 1900 - 1970

	1900	1910	1920	1930	1940	1950	1960	1970
Total	163,752	248,381	324,410	399,746	399,178	430,534	385,797	308,853
White	146,090	224,815	293,517	357,741	357,346	374,570	301,170	195,257
* Black	17,662	23,566	30,893	42,005	41,832	55,964	83,654	87,604
Per Cent Black	10.8%	9.5%	9.5%	10.6%	10.5%	13.0%	21.7%	28.4%

* Other races were included with blacks prior to 1960, but not for 1960 and 1970.

The white population peaked in 1950 at 374,570. By 1960, almost 74,000 whites had fled the City; by 1970 another 105,000 had left. (The same pattern was occurring in Kansas City, Kansas.) Yet the black population was steadily increasing. Preliminary reports from the 1980 Census indicate a continuation of this pattern

(KC Star, July 13, 1980).

Blacks, however, were moving to Johnson County in a trickle. The first black family did not move to northeastern Johnson County (where the bulk of the County's population lives) until 1967 (Wall Street Journal, February 19, 1969:1). The entire black population for Johnson County in 1980 is still expected to be below one percent of the County's 262,000 residents (KC Star, February 3, 1980). There were 810 blacks counted in the 1900 Census for Johnson County and, remarkably, only 1,031 by 1970. This is compared to an increase in the total population over the same period from 18,100 to 216,876. The County's black population remains largely confined to the same two locations where blacks have been living since the turn of the century: Olathe and Merriam. These two areas account for more than 60 percent of the total County population , or 634 blacks.

The most common arguments against the claim of this thesis, that racial agreements provided the basis for continued exclusion of blacks in Johnson County, are the two theories expressed briefly in the introduction: income and ethnicity. The following analysis is therefore given in order to dispel their importance as primary factors in halting black movement into Johnson County.

THE INCOME THEORY

Numerous scholars have recently downplayed the importance of the income theory. Political scientist Gary Orfield concludes that patterns of segregation cannot easily be explained by differences in income, nor can a rise in income provide a remedy (1977:46). In accordance, the USCCR in a 1977 report states that statistical analyses of residential patterns suggest that

economic differences account for only a small part of the explanation of racial separation (16). Noted demographer Karl Taeuber estimates that no more than 20 to 25 percent of the racial segregation that exists in metropolitan areas can be attributed to economic factors (1975:818). Moreover, Reynolds Farley, another well known authority on segregation, found that well-to-do whites are far more segregated from affluent black families than they are from poor white families (1975:167). Not surprisingly, therefore, whether below or above the poverty income level, a much greater proportion of blacks than whites lived in poverty areas in 1970, both inside and outside of metropolitan areas (U.S. Census, 1972:Table B). Furthermore, low-income whites living in metropolitan areas were distributed equally between central cities and suburban areas, while for blacks the ratio was five to one (U.S. Census, 1973:10-11).

In 1970, if blacks had been distributed by income between Detroit and its suburbs the same way whites were, 67 percent of the black families would have been suburbanites (Cottingham, 1975:273-296). A 1975 study reported that the average white family with an income below the poverty line lives in a neighborhood with a higher median income than a typical black family earning more than $24,000 (Orfield, 1977:48). The same study found that black professionals and managers live in neighborhoods where most workers are unskilled or semiskilled, while whites in similar brackets live in communities with few such workers (Ibid.). Similar findings have prompted Chester Rapkin to conclude that the "degree of discrimination appears to increase markedly as blacks approach middle-class status" (1969:120). In conclusion,

if people were residentially distributed on the basis of the housing they can afford, rather than according to skin color, the current level of residential segregation would be quite low (Farley, 1975:167).

In view of the above, if limited income were the only barrier to black housing choice in Johnson County, then blacks could be expected to have a much higher rate of homeownership in white areas, if those homes were within the median black income. It is often assumed that "affluent" Johnson County remains largely white because the housing costs are beyond the reach of most blacks (Curls and Wimmes interviews, 1978). This is, in fact, not so. By using 1970 census data, Table 8 on page 134 reveals that the majority of housing in several Johnson County communities is well within the reach of median income blacks. The 1970 median income for black families in the Kansas City urbanized area was $7,226 (U.S. Census, Table 76). Before current inflationary changes, realtors generally felt the ceiling for the purchase price of a home was two and one-half times the family income. Therefore, the median-income black family from Kansas City, Missouri, could purchase a home valued at $18,065. By using these guidelines, Table 8 shows that for several nearly all-white Johnson County communities the majority of housing was valued at under $20,000 and a significant amount was valued at less than $15,000. Figure 19 on page 133 shows the housing value by census tract. These figures gain further credibility if one drives through some of the neighborhoods in these communities. Block after block of modestly sized homes are visible. Most of the larger more expensive homes in the County were built after the mid-1960s.

FIGURE 19 - DISTRIBUTION BY CENSUS TRACT OF HOUSING VALUED AT LESS THAN $20,000 IN JOHNSON COUNTY, KANSAS: 1970

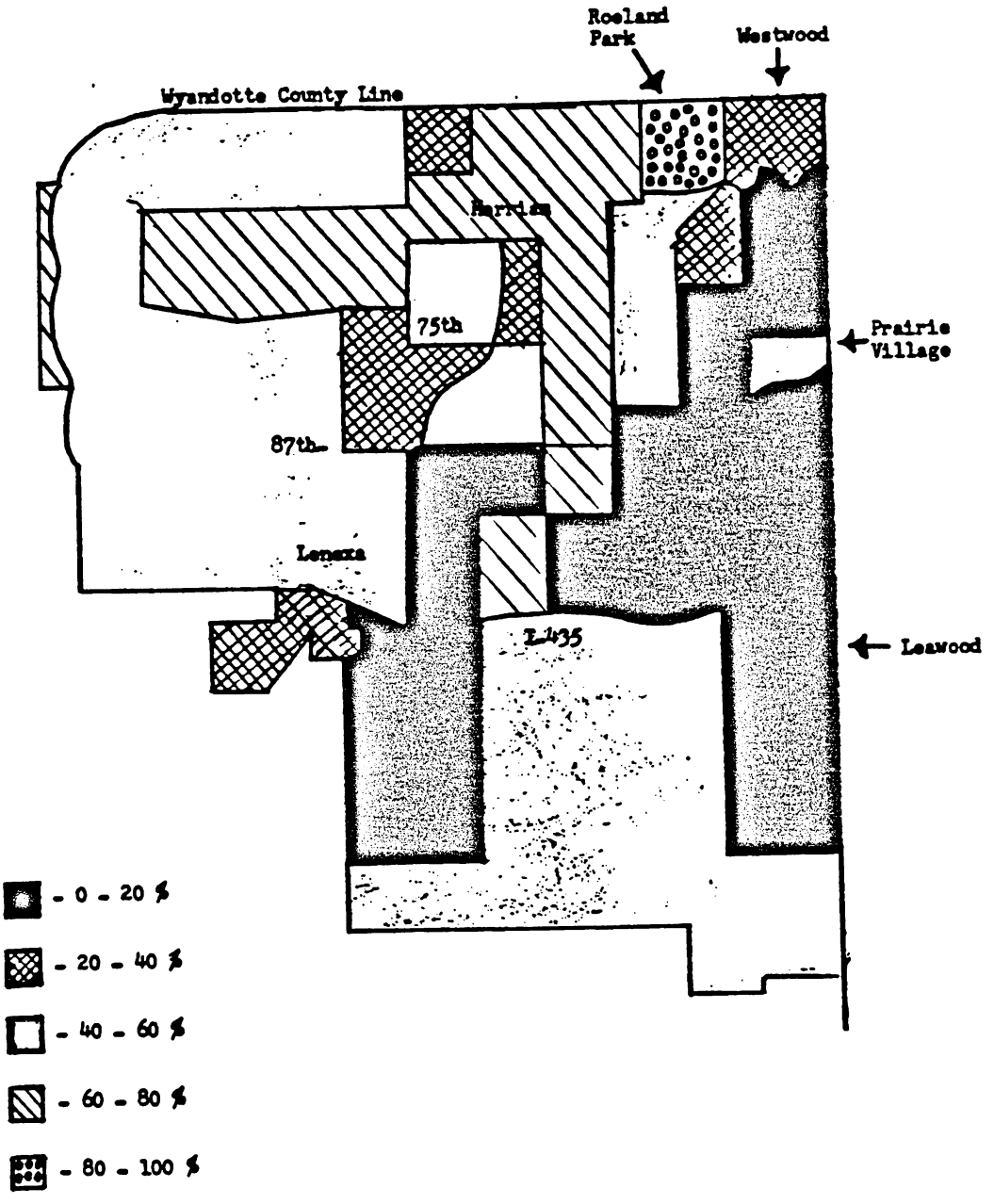


TABLE 8 - PERCENTAGE OF HOUSING VALUED AT LESS THAN $20,000 AND $15,000 IN SELECTED INCORPORATED CITIES OF JOHNSON COUNTY, KANSAS: 1970

Olathe	2,664	1,815 (68%)	1,120 (42%)
Prairie Village	7,290	2,902 (39%)	634 (9%)
Shawnee	4,056	2,317 (57%)	1,238 (31%)
Merriam	2,228	1,228 (55%)	588 (26%)
Roeland Park	2,460	1,810 (74%)	896 (36%)

(Source: U.S. Census)

THE ETHNICITY THEORY

As for the ethnicity argument, Myrdal suggested in 1944 that other ethnics formed colonies in the poorest parts of town, but after a few generations they became assimilated and "tend to disregard ethnic affiliation in seeking residence and pay more attention to personal needs and ability to pay rent...Negroes...are kept aliens permanently" (1944:620). More recently, several well known scholars have agreed with this position (Kane, 1975; Farley, 1975; Taeuber, 1975).

Although Kansas City does not have the ethnic variety of many cities, their Italian community provides some support for the above view. The first Italians came to Kansas City just before the turn of the century and settled in the "North End" in an area bounded by First Street, Admiral, Oak and Tracy (See figure 1). Nearly all of them lived north of Independence Avenue (City Development Department, KCMO., 1969: 4). By 1918, the Italian population living in this area was estimated at 12,000 (Ibid.). It continued to grow until

quotas on immigration were set by congress in 1924. Many Italians then started to move to the northeast of the core area and met some resistance from the white residents who lived there. Racial covenants were written in this area, in some instances against Italian occupancy, and the same pattern of refusing to sell until a block was broken prevailed (Ibid.). Yet they faced far less discrimination than blacks and their problems were generally confined to their lack of skills and difficulty with the language (Ibid.). Within a few generations, they had become, for the most part, assimilated throughout the KCMR, although today there remains a small identifiable core area of the old Italian community (KC Star, July 30, 1978).

John Kain has studied this question as thoroughly as anyone and concludes that

> the current intensity of Negro residential segregation is greater than that documented for any other identifiable racial or ethnic group in American history and that in contrast to the experience of ethnic groups, who experience rapid dispersal from their original ethnic concentrations, black Americans have become more rather than less segregated with time (1975:23).

Much of the discussion in this thesis has been in regard to the growing acceptance and solidification of racial covenants and agreements prior to 1950 and their continuing effect. The proposition throughout has been that segregation was not "exclusively" a voluntary choice. Rather, the practice of writing racial covenants on private property, more importantly, the institutionalization of policies upholding racial agreements by everyone involved in housing transactions, insured that blacks would be deprived of the majority of housing within

our cities. Without such constraints, the high level of segregation so characteristic today would not be nearly so pervasive. Racial agreements, in the broadest sense of the term, remain a part of the majority of housing decisions involving blacks, even though they are "unlawful." Whites do not bomb blacks out of their neighborhoods anymore, although their presence still tends to cause some hostility. Discrimination today is less explicit and therefore much harder to clearly identify any one single cause or force. The legacy remains because segregation has become a way of life. Thomas Schelling hypothesizes that once a pattern is established, people will choose to maintain it, many times even if they disapprove of it; choice is constrained (1975:82). He also writes about the difficulty individuals encounter when they have to choose between polarized extremes; for example, a white neighborhood or a black one. When confronted by such a choice, individuals will reinforce the segregation. As a consequence, broadening choice will remain as issue for generations to come.

APPENDIX A

THE RECORDING OF RACIAL COVENANTS

All restrictive covenants are recorded at the Recorder of Deed's Office located at the courthouse of each respective county seat. There are several ways retrictive covenants can be found. The easiest place to find restrictions is to look in the Plat Books. They give a planned layout of lot dimensions, street locations, and so forth, of a subdivision or plat. Not all restrictions, however, are recorded directly upon the plat itself; this is left to the filer's discretion. The practice of placing restrictions with the plat was quite common in the 1920s and then less so in the 1930s. After WWII, many developers again chose this method and today nearly all plats seem to also contain a listing of restrictions.

A second way of recording restrictions is to place them directly in the title deed or warranty deed. A warranty deed is an instrument for the conveyance of fee title. The owner of property always signs the deed and the deed may cover numerous transactions. It must, however, always convey a title to something (Harris interview, 1979). Warranty deeds could therefore be filed by any person or organization who held the title and maintained a continuing interest in a piece of property. They can also cover as much land as the conveyor wants; for example, an entire tract of land that is subdivided can be included in just one warranty deed. The title holders of such deeds were land companies or real estate firms who handle large tracts of land. County records in the KCMR show examples of whole sections of land being racially restricted by a single title or warranty deed--a powerful land control

tool.

Warranty deeds were usually restricted on the "first deed out," where the first owner of a piece of property agrees not to "transfer...premises to Negroes under forfeiture of agreement." Other restrictions were sometimes included for such things as lot size, set backs, prohibitions against outhouses, and so forth. Prior to WWII, however, when restrictions for other matters were not as common, the restrictions were usually for the sole purpose of excluding blacks.

A third method of recording restrictions occurs when the grantor and grantee sign a separate agreement quite apart from the actual title deed itself. In this case, various restrictions are drafted under the title "declaration of restrictions," and may be recorded in either the plat books, the record books, or both. A declaration of restrictions does not convey title but merely sets out certain restrictions for a specific piece of property (Ibid.). After WWII, this method was used extensively in the KCMR, almost always by large land developers like J.C. Nichols, who also recorded his restrictions in every other conceivable place.

METHOD OF DETERMINING IF A SPECIFIC SUBDIVISION OR LOT WITH A SUBDIVISION CONTAINS RACIAL RESTRICTIONS

In order to look up restrictions, the name of a subdivision or an individual developers' name must be known and the year in which the restriction was first written. For an individual piece of property, the first step is therefore to locate the "first deed out." This is found by determining where the property is located and the subdivision within which it lies.

Next, go to the "Plat Book Index" listing all subdivisions, find the one in question and go to the correct plat book where the date the plat was filed is given along with the name of the developer. Take this information to the "Grantor Books" for the year in question. The grantors are listed alphbetically. For the first deed out, the grantor is either the subdivision, the developer, or perhaps a bank. The name of the grantee is also listed along with a reference to either a warranty deed book and page where the restriction is found. Also, in the back of each grantor book is a listing of every sbudivision which recorded restrictions for that year along with the book and page where they are found in the record book.

APPENDIX B

M E M O R A N D U M

TO: Commission Members

FROM: Todd H. Pavela, Executive Director

RE: Survey of Real Estate Advertising Practices

DATE: June 24, 1966

As authorized by the Commission on May 24, 1966, I endeavored to ascertain the meaning of the phrase "available to anyone" or "for anyone" or the use of dotted lines to which the allegation has been made that this type of advertising practice is meant to separate homes available to Negroes from those available to whites. Listed below are the results of this survey based on the Want Ad section of the Kansas City, Kansas, Sunday, June 12, 1966 edition.

As a matter of judgment and of honest verification, it was decided to make this survey in two parts, the first unofficial on the part of a volunteer and the second official in the name of the Commission on Human Relations.

The volunteer contacted all real estate brokers who used the above mentioned advertising techniques. Calls were made without reference to any official investigation. Considered by most real estate agents to be a potential white uninformed client there was no difficulty in receiving information as to the meaning of the use of the dotted line or the meaning of the phrase "available to anyone". The same real estate brokers were contacted four days later officially in the name of the Commission requesting the same information. Although substantial verification of the unofficial inquiry was obtained, as suspected, brokers when dealing with an official investigation were markedly less forthright in their explanation of the purpose of their unusual advertising techniques.

Analyzing both unofficial and official calls and being

informed of the previous use of the term "for colored" which now has apparently been superseded by the dotted line or the euphemism "for anyone", I am totally convinced that these advertising techniques are designed to separate through public advertising houses which may be sold to Negroes or other minority groups from houses which are available to white families only.

NOTE: The category "not called" indicates unable to reach the office or to have the office return the call.

REAL ESTATE ADVERTISEMENTS, KANSAS CITY, KANSAS, SUNDAY, JUNE 12,1966

ADVERTISING PRACTICES SURVEY

UNOFFICIAL INQUIRY	OFFICIAL INQUIRY
Realty Broker "A" "For anyone" When he found out that the caller was white, he said, "Honey, you really wouldn't want that one." It was located in a Negro area. Two other locations in the same ad were in white areas and he would not sell them to Negroes. Another house was in a commercial area, which he would sell to either a white or Negro person, but he stated that those listed as "For anyone" were available primarily for Negroes. He stated that "We have the nicest colored folks here. We don't have a bit of trouble with our colored folks here. They don't say a thing when we tell them a house isn't open to them. They don't want to break into white areas."	Realty Broker "A" "For anyone" "Anyone" ....the office manager indicated that the term was synonymous with the old term "for colored only". He indicated that "for anyone" meant available to Negroes and where the term was not used meant restricted sale to whites only.
Realty Broker "B" The caller was informed that this was an integrated area and that a Negro could buy there. None of the other listings were available to Negroes. When asked if a Negro could buy one of the other homes (not listed as "for anyone") she replied, "Not from us they wouldn't. We just represent the seller."	Realty Broker "B" The office receptionist said that "anyone" doesn't have any particular meaning simply designated that the area was predominantly Negro in character. When asked if Negroes would buy any of the houses not designated as for anyone she refused to answer.

UNOFFICIAL INQUIRY	OFFICIAL INQUIRY
Realty Broker "C" The realtor informed the caller that all of the homes below the line were in mixed or "completely colored" neighborhoods and were "open to colored." If a white person wanted to buy one of these homes, however, he could. Those listings above the line were not available to Negroes but "to white only if the seller says not to sell to colored."	Realty Broker "C" "People can interpret it anyway they want to...it saves people both time and trouble. Negroes can purchase houses below the line without any difficulty, but they would have 'difficulty purchasing homes above the line'."
Realty Broker "D" Not called.	Realty Broker "D" The office manager showed extreme hesitancy in discussing the matter. He said advertising methods were personal policy and not subject to any city ordinance; the result was refusal to cooperate with the survey.
Realty Broker "E" The realtor gave the address of this home and inquired whether the caller was white or "colored" He said that those homes listed "For anyone" were for Negroes, while the other listings were only for white persons--according to the wishes of the white sellers. There was no hesitation about his mentioning that "for anyone" meant for Negroes.	Realty Broker "E" Not able to be reached by phone.

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NOTES:

1. The Wyandotte County records were surveyed by Jim Kaup.

2. The period from 1933 to 1937 was reviewed by Jim Kaup.

3. The list of subdivisions for which racial restrictions were removed in Kansas City, Missouri, include the following:

Porter's Place (1944)	Belvidere (1943)
Wright Place (1940)	Hazelcroft (1943)
Brooklyn Summit (1940)	Belmont (1943)
Avondale Park (1940)	Ashcroft (1943)
Kidwell Place (1944)	Green's Resurvey (1943)

4. Information regarding the small pockets of blacks living in Kansas City, Missouri, and throughout the metropolitan area, came from a wide variety of sources including interviews, housing reports, and the Kansas City Call newspaper. There is no certain way to clearly define the boundaries that separated black and white neighborhoods during earlier years, or to determine exactly where blacks lived away from the main black section. Much of the data I received from various sources was conflicting and required personal interpretation.

5. Information on public discrimination in public accomodations was summarized from hundreds of Kansas City Call articles.

6. Miscegenation articles regarding arrests and fines appear frequently in the Kansas City Call. Some of the more interesting include:

January 15, 1926	June 24, 1929
March 14, 1927	January 24, 1935
July 1, 1927	

7. This data was taken from four large maps located in the Kansas City, Kansas, Planning Department. The purpose of the maps was to clearly define where blacks were presently living and to recommend which direction, and areas, blacks should be allowed to move in the future. The recommendations correspond precisely with the black movement over the last 50 years since the first Plan was released.

8. The Court cited a statement by Senator Gary Hart in hearings that were held for the Act in 1967.

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