



COLORADO
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ANNUAL SEMINAR ON MUNICIPAL LAW

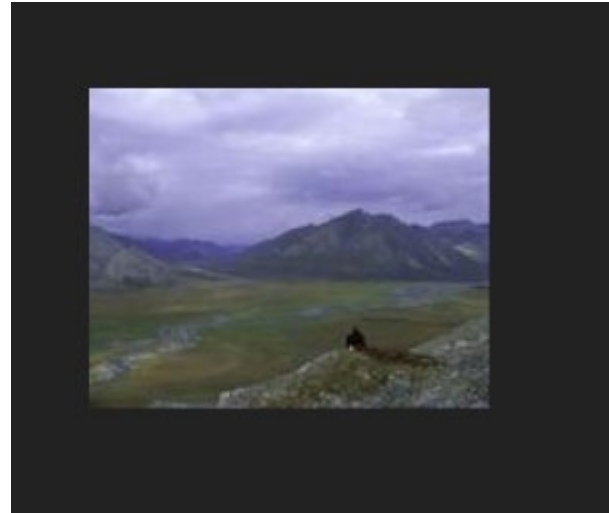
2022

Laws are Neutral (Or Are They?)

A Discussion on the
Discriminatory Nature of
Laws and the Role of the
Municipal Attorney

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Introductions and Agreements



Perspective and Discussion

Richmond, CA: A Case Study

- 1940-1945 Severe Housing Shortage and the federal government stepped in to help out, building and financing housing across the United States.
- African American Housing built to be temporary, along railroads and close to ship building areas
- Further inland built 700 single family homes, Rollingwood-a white suburb. Bank loans required that not one home be sold to African Americans.
- Government refused to insure bank loans to African Americans.
- Builders got loans from FHA that explicitly prohibited the sale of homes to African Americans.



Not Ancient History...

August 18, 2022, New York Times article: Summer of 2021, Dr. Nathan Connolly and his wife Dr. Shani Mott had an appraisal completed while they were home with their three children. A few months later, they had another appraisal while a white professor friend was at the home, and all family photos had been removed and replaced with Caucasian images.

SAME HOUSE

African American
Home Appraised
\$472,000

Caucasian
(Same Home) Appraised
\$ 750,000



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Redlining and its Ongoing Effects

How have you seen the effects of housing discrimination in your city?

As a city attorney, how has this affected any legal advice you have given or could have given?

Early Zoning Ordinances

- 1910 the City of Baltimore passed a segregation ordinance.
- The City prosecuted violations of the ordinance.
- 1917 the United States Supreme Court overturned a racial zoning ordinance in Louisville, Kentucky. *Buchanan v Warley*, 245 U.S. 60
- “We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law.”
- Decision generally ignored.
- Atlanta passed an ordinance to get around *Buchanan* creating racial zoning districts.



Exclusionary Zoning

- What is it?
- There are two purposes: 1) Keep white neighborhoods white and 2) Protect single-family districts by preventing industrial or environmentally unsafe uses in the district.
- Result: Exclusive white suburbs and the creation of slums with more industrial pollution where higher minority populations would reside.



St. Louis

- Planning engineer categorized every structure in the city and proposed rules to prevent future multi-family, commercial or industrial structures from threatening single-family neighborhoods. (sounds benign)
- Actual goal (same engineer): prevent movement into “finer residential districts...by colored people”
- Ordinance adopted in 1919 (two years after *Buchanan*)
- Planning Commission racial undertones in decisions.
- Today: U.S. General Accounting Office 1983 analysis found that commercial waste treatment facilities or uncontrolled waste dumps were more likely to be located near African Americans than white residential areas.



Zoning-local issues

- 1970 Oklahoma case, the segregated town of Lawton refused to permit a multiunit development in an all-white neighborhood after residents circulated a petition in opposition.
- The permit was denied.
- Federal appeals court found the stated reasons were pretexts.
- 1977, the Supreme Court upheld a zoning ordinance in Arlington Heights (Chicago suburb) that prohibited multiunit development anywhere except adjacent to commercial areas.





Local Government Issues

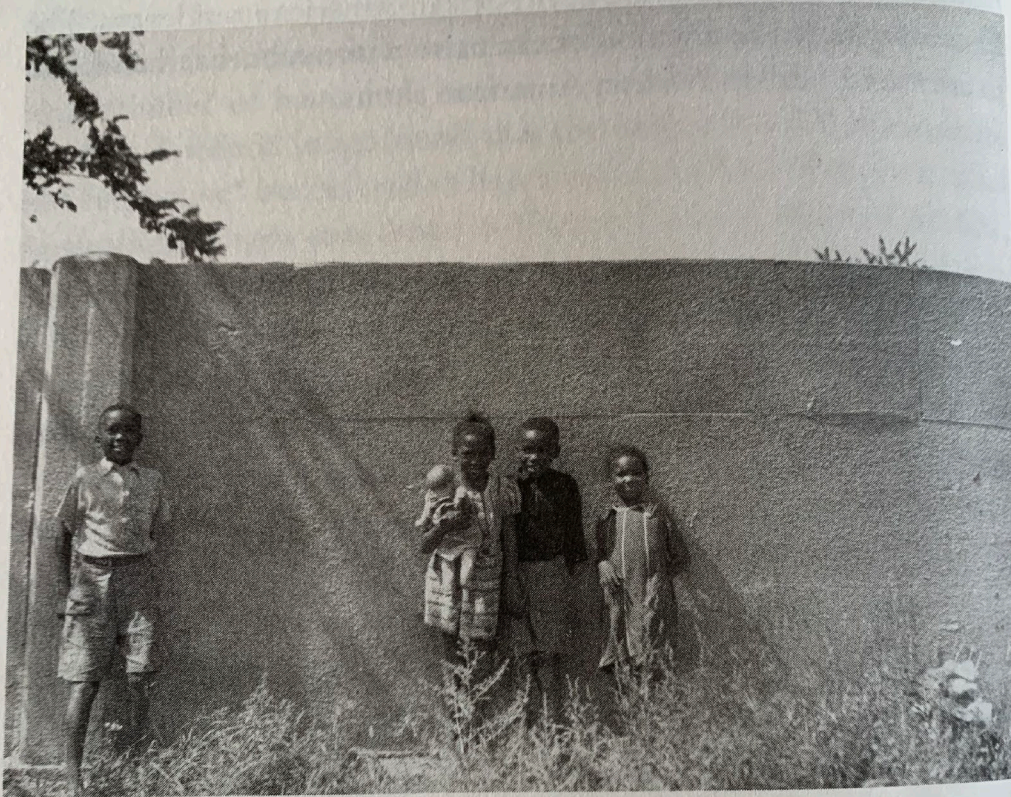
Racial and Exclusionary Zoning

What is your understanding of de jure segregation?
How do you think this issue might intersect with
municipal law and zoning issues?

Federal Housing Administration (FHA) and VA

- FHA insured bank mortgages that covered 80% of purchase price with a 20-year term (changed mortgage industry).
- FHA appraisal standards required “white-only” covenants or deed restrictions.
- By 1950 VA and FHA were insuring half of all new mortgages nationwide.
- FHA biggest impact on segregation was in the financing of entire subdivisions as racially exclusive white enclaves.
- FHA financed Levittown and other suburbs on the condition that, like Richmond, it be all white with no foreseeable change in its composition.





Detroit, 1941. The Federal Housing Administration required a developer to build a wall separating his whites-only project from nearby African American residences.

FHA built literal and figurative walls separating whites from blacks.

1948 *Shelley v Kraemer*, 334 U.S. 1

- Supreme Court acknowledged enforcement of restrictive covenants was unconstitutional, overturning a 1926 decision upholding them.

“It should be observed that these covenants do not seek to proscribe any particular use of the affected properties...The restrictions of these agreements, rather, are directed toward a designated class of persons and seek to determine who may and who may not own or make use of the properties for residential purposed. The excluded class is defined wholly in terms of race or color ‘simply that and nothing more’.”
- Two weeks after the decision, FHA commissioner stated the *Shelley* decision would in no way affect the programs of this agency.

“Just a business organization” that could consider only the “cold facts and the elements of risk.” (1949)



Local Anti-Discrimination Laws (Amendment 2)

- Boulder, Denver, and Aspen added sexual orientation to their anti-discrimination laws (1980s).
- Ordinances which banned discrimination in housing, employment, education, public accommodations, and health and welfare services.
- 1996 *Evans v. Romer* U.S. Supreme Court found Amendment 2 was unconstitutional.
- “The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence.” (Is it?)



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Local Government Laws and Tactics

What can we do to promote
Diversity, Equity, and Inclusion in our
municipalities?



A Quick Discussion on Ethics...

Suggested Reading

- *The Color of Law: A Forgotten History of How Our Government Segregated America* , by Richard Rothstein
- *Between the World and Me* , by Ta-Nehisi Coates
- *The 1619 Project* by Nikole Hannah-Jones
- *My Own Words* , by Ruth Bader Ginsburg with Mary Harnett and Wendy Williams





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Thank You!

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