Housing and Discrimination Cont’d

Federal Statutory Limitations

• *Dews v. Sunnyvale*

• *Advocacy Center for Persons with Disabilities, Inc. v. Woodlands Estates Association, Inc.*

**Dews v. Sunnydale,**

Discrimination in Housing

• Fair Housing Act

• Federal Civil Rights Acts
**Dews v. Sunnydale Cont’d**

**Fair Housing Act**

- Discriminatory effect
- Discriminatory intent

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**Dews v. Sunnydale Cont’d**

*How Do You Demonstrate Discriminatory Effect?*

- Either by showing—
  - adverse *impact* on a minority group or
  - harm to the community generally by the *perpetuation of segregation*
Adverse Impact

- Apartments are disproportionately used by blacks as compared to whites.
- 14.24% of all households were black but 24% of renters were black.
- The ban eliminates much of the housing that could be used in subsidized housing programs such as Section 8.

Adverse Impacts Cont’d

- 31.4% of all households were very low to moderate income with housing problems, but 45.72% of black households fell into this category while only 22.86% of white households were in that category.
- Blacks constituted 38.39% to 52% of the subsidized renters, while being only 19.8% of the population, making them 200-260% more of the population in assisted housing than the general population.
**Dews v. Sunnyvale Cont’d**

**Adverse Impacts Cont’d**

- Increased cost of housing. Only 2.78% of blacks paid $150,000 or more for a house.
- Denial of the variance had adverse impact because the project was for Section 8 housing and multi-family housing.

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**Dews v. Sunnyvale Cont’d**

**Perpetuating Segregation**

- Sunnyvale’s population was 2.7% black. Its households were 0.95% black.
- Neighboring towns Garland and Mesquite had multi-family and smaller single-family housing.
- Mesquite and Garland have the largest number of Section 8 tenants in all of the Dallas County suburbs.
**Dews v. Sunnyvale Cont’d**

**Perpetuating Segregation Cont’d**

- Census tracts show that blacks are in the neighboring towns right on the border of Sunnyvale.
- Neighboring communities are being forced to assume Sunnyvale’s obligation to provide fair housing.

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**Dews v. Sunnyvale Cont’d**

**Burden Shifting**

1. *bona fide* (compelling) government interest and

2. no alternative method with less discriminatory impact
**Dews v. Sunnyvale Cont’d**

**How Do You Demonstrate Discriminatory Intent?**

By showing—

- a fact issue as to whether defendant’s stated reasons are *pretextual* and
- a reasonable *inference* that race was a significant factor in the decision.

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**Dews v. Sunnyvale Cont’d**

Federal Civil Rights Acts

- Equal Protection
- *Arlington Heights* (different tests for Equal Protection v. FHA)
- Circumstantial evidence of discriminatory purpose
Dews v. Sunnyvale Cont’d

Circumstantial Evidence

• Discriminatory impact
• Historical background of the decision
• Specific sequence of events leading up to the decision
• Departures from normal procedures
• Substantive departures from the norm

Sunnyvale’s Website

The Town of Sunnyvale is located about 15 miles east of downtown Dallas. A part of the thriving Dallas/Fort Worth metroplex, this small, upscale community in eastern Dallas County retains a personality and flavor all its own.

Sunnyvale shares borders to the north and west with the larger suburbs of Mesquite and Garland, where shopping, fine dining and entertainment are only minutes away. At the same time, the town is also bordered by the peaceful waters of Lake Ray Hubbard and the sprawling, rural expanse of Kaufman County.

Sunnyvale is situated to truly benefit from the “best of both worlds.”

http://www.townofsunnyvale.org/about.htm (Spring 2004)
History of Sunnydale

*Sunnyvale has maintained its rural character and expanded its zoning laws to accommodate a changing lifestyle.* Today, with over 3,000 residents, Sunnyvale successfully combines an industrial and business atmosphere with quality residential districts. It has retained its small-town, country living lifestyle, yet has easy access to neighboring metropolitan shopping, dining, entertainment, and recreational facilities.

[http://www.townofsunnyvale.org/history.htm](http://www.townofsunnyvale.org/history.htm) (Spring 2004)

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1990 Census of Population and Housing Summary for Sunnyvale, Texas

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Population</td>
<td>2,228</td>
<td>100%</td>
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<tr>
<td>White</td>
<td>2,094</td>
<td>93.99%</td>
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<tr>
<td>Black or African American</td>
<td>16</td>
<td>0.72%</td>
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<tr>
<td>American Indian and Alaska Native</td>
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<td>0%</td>
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<tr>
<td>Asian</td>
<td>20</td>
<td>0.90%</td>
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<tr>
<td>Hispanic or Latino</td>
<td>82</td>
<td>3.68%</td>
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</table>
### 2000 Census of Population and Housing Summary for Sunnyvale, Texas

<table>
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<tr>
<th>Category</th>
<th>Count</th>
<th>Percentage</th>
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</thead>
<tbody>
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<td>100%</td>
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<tr>
<td>White</td>
<td>2,395</td>
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<td>70</td>
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<tr>
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<tr>
<td>Hispanic or Latino</td>
<td>118</td>
<td>4.4%</td>
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</table>

### 1990/2000 Census of Population and Housing Summary for Sunnyvale, Texas

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<td>82/118</td>
<td>3.68/4.4%</td>
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</table>

Declarations

• 2.01 – residential purposes only
• 2.25 – no illegal, noxious, or offensive activity, nuisance, or source or embarrassment, discomfort, or annoyance

Advocacy Center for Persons with Disabilities, Inc. Cont’d

Proof of Discrimination

• Impact,
• Disparate treatment, or
• Reasonable accommodations
Advocacy Center for Persons with Disabilities, Inc. Cont’d

Reasonable Accommodations

Variances and exceptions that do not impose—

• “undue financial and administrative burdens” or

• changes “that would be substantial or would constitute fundamental alterations in the nature of the program”

Advocacy Center for Persons with Disabilities, Inc. Cont’d

Balancing

• Burdens on defendant v. benefits to plaintiff

• First Amendment freedoms of expression and petition v. fair housing
Environmental Protection

- Wetlands
  - SWANCC
- Endangered Species
  - Babbitt v. Sweet Home

Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers

Wetlands and Section 404 of the Clean Water Act

- Navigable waters = Waters of the United States
- Intrastate waters - Corps’ original interpretation
- Migratory Bird Rule – Corps’ latest interpretation
SWANCC Cont’d

Wetlands and Section 404 of the Clean Water Act

• Congressional intent/acquiescence
• Adjacency (Riverside Bayview Homes)
• Traditional land use control (states)
• Affecting commerce


Section 9’s Prohibition

• “[I]t is unlawful for any person to take any [listed] species.
• Take is defined by the statute as “to harass, *harm*, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.”
Section 9’s Regulations

• Regulation defines “harm” to include “significant habitat modification or degradation where it actually kills or injures wildlife.”

Respondents’ Arguments

• Section 5 Authority – Land Acquisition
• Overly expansive interpretation of the term
Babbitt v. Sweet Home Cont’d

Court’s Responses

• Common understanding of the words
• Broad purpose of the ESA
• 1982 Section 10 amendments – a limitation on Section 9 through habitat conservation plans (HCPs) and *incidental* take permits (ITPs)

Babbitt v. Sweet Home Cont’d

D.C. Circuit’s Errors

• Flawed premise
• “Knowing” action is enough
• Canon of construction - *noscitur a sociis*
"The cutting of a nest tree in which an endangered species dwells and breeds can effectively kill the bird, regardless of whether the bird is at home when the tree falls."

U.S. Solicitor Gen. Drew S. Days III before the Supreme Court.

Babbitt v. Sweet Home Cont’d

Red-cockaded Woodpeckers
Found in the piney woods of East Texas

Juvenile Male

Adult Male
**Babbitt v. Sweet Home Cont’d**

"Once the eagle leaves the nest, then the landowner could conceivably cut the nest tree down because they haven't directly, physically harmed the bird. That illustrates the reach and somewhat ludicrous implications of Sweet Home."

Michael Bean, Environmental Defense Fund

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CERCLA’s Potentially Responsible Parties (PRPs)

1. Present owners of a **facility**,  
2. Past owners of a facility at the time of disposal,  
3. Individuals who "arranged for disposal" of the waste, and  
4. Transporters of the waste.
Tanglewood Cont’d

• CERCLA imposes strict liability, and if the harm is indivisible (as is likely in most cases), that liability will be joint and several.

• A party that incurs cleanup costs, either the government or a private party, may bring suit seeking reimbursement of those costs.

Assignment for Monday

Pages 610-45, Susan Mead, Incentives for Downtown Revitalization: Tax Increment Financing Districts, Chapter 380 and Other Tools, 32 The Urban Lawyer 1013 (2000) (pdf) [Focus on Section III]