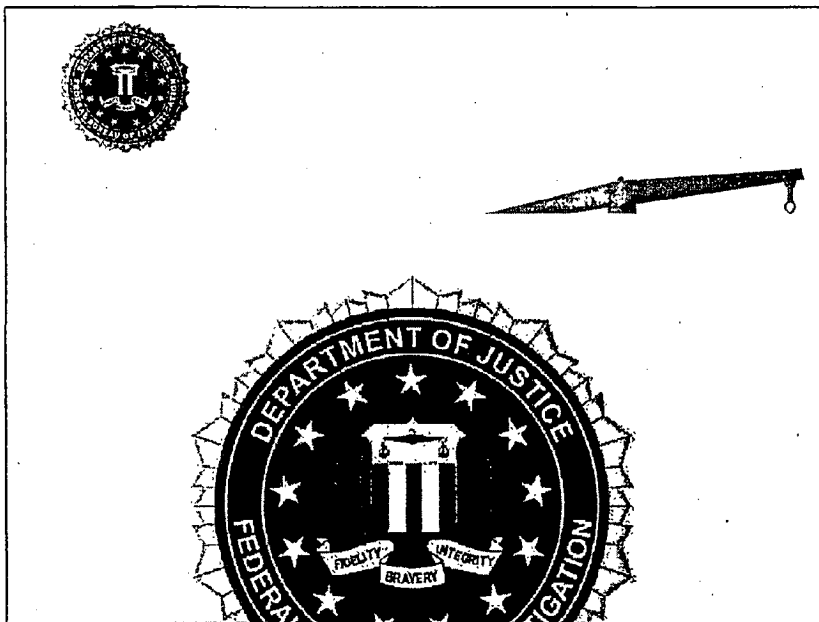






The FBI's Civil Rights Program

By

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and

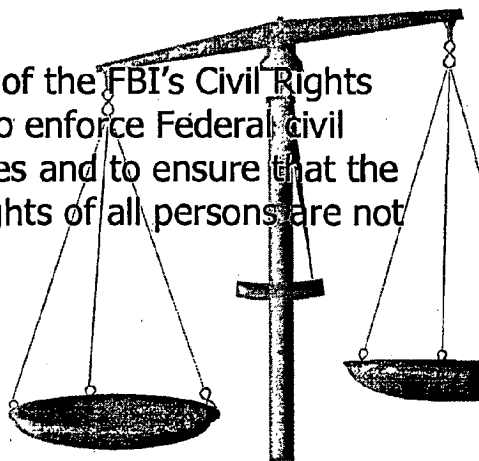
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MISSION

The mission of the FBI's Civil Rights Program is to enforce Federal civil rights statutes and to ensure that the protected rights of all persons are not abridged.



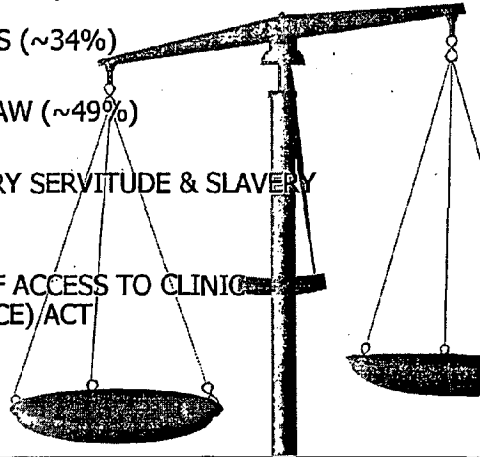
The mission of the FBI's Civil Rights Program is to enforce the civil rights statutes and to ensure that the protected rights of ALL persons, not just U.S. citizens, are not abridged. The FBI has become involved in a number of cases involving incidents between law enforcement and illegal immigrants.

Describe incidents involving illegal immigrants and law enforcement if known.



CIVIL RIGHTS SUBPROGRAMS (FY08)

- 1. HATE CRIMES (~34%)
- 2. COLOR OF LAW (~49%)
- 3. INVOLUNTARY SERVITUDE & SLAVERY (~16%)
- 4. FREEDOM OF ACCESS TO CLINIC ENTRANCE (FACE) ACT (~1.0%)



These subprograms appear in priority order for the FBI's Civil Rights Program. The impact hate crimes have on the entire community is the primary reason combating hate crimes is the number 1 priority within the CRP.

The size of the perceived crime problem of color of law is the justification for it being the number 2 priority.

Involuntary Servitude and Slavery is a fast growing crime problem, which has been recognized by the FBI, DOJ, ICE, the Department of State, and law enforcement agencies across the globe. This in part is the reason for ISS being elevated to the number 3 priority within the last few years.

During FY 2004, the FBI investigated 1744 civil rights matters. Of the investigations, 375 were hate crimes investigations, 1265 color of law investigations, 86 ISS investigations, and 18 FACE Act investigations.



HATE CRIMES



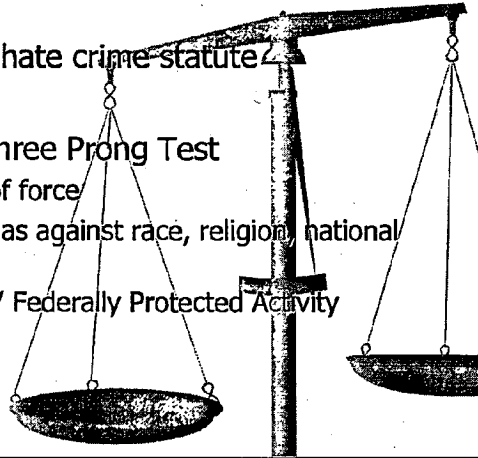
Describe what is seen on the slide.

Discuss that not all hate crimes are this egregious and the Federal laws in many instances differ from state and local laws.



DEFINITION vs. JURISDICTION

- No single specific hate crime statute
- Federal Crime - Three Prong Test
 - 1. Threat or use of force
 - 2. Motivated by bias against race, religion, national origin/ethnicity
 - 3. Interference w/ Federally Protected Activity



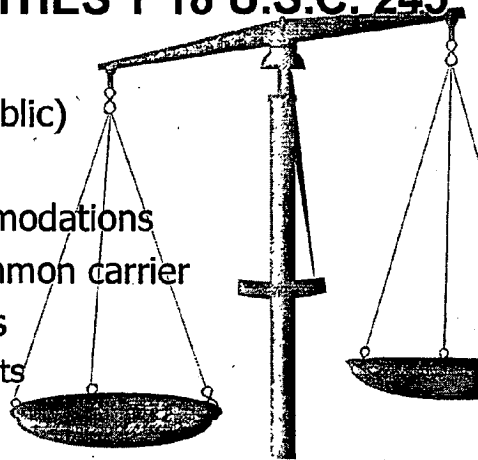
This slide should establish that there is no specific federal hate crime statute. The federal statutes which are typically used to prosecute federal hate crimes (T 18 USC 245, T 42 USC 3631) must establish the three elements listed on this slide.

It should also be noted that federally, there does not have to be an underlying criminal act (such as assault, murder, etc.), however the threat of force, or use of force which are required under federal statute may in fact constitute a federal/state/local criminal act in addition to the federal hate crime.



FEDERALLY PROTECTED ACTIVITIES T 18 U.S.C. 245

- Education (Public)
- Employment
- Public Accommodations
- Travel on common carrier
- State Facilities
 - Parks – Streets



These are specific Federally protected activities specified in T 18 USC 245. Satisfying the protected activity element is generally the most difficult aspect of a federal hate crime investigation/prosecution.

It should be noted that the statute was written during the civil rights era, which is evident by the activities being regulated.

If possible, give an example of a violation of each protected activity.

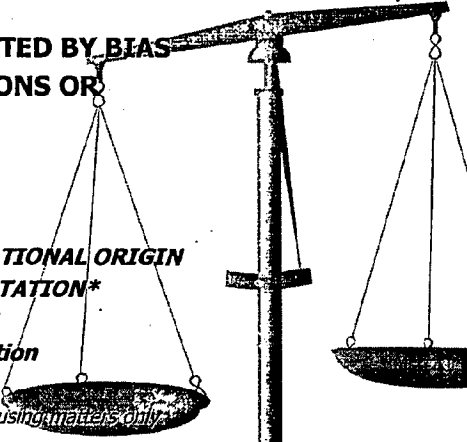


HATE CRIME DEFINITION

(Hate Crimes Statistics Act-1990)

- **CRIME MOTIVATED BY BIAS**
- **AGAINST PERSONS OR PROPERTY**
- **BASED ON:**
 - **RACE**
 - **RELIGION**
 - **ETHNICITY/NATIONAL ORIGIN**
 - **SEXUAL ORIENTATION***
 - **DISABILITY* ***
 - **Sexual Orientation**

***Discrimination in Housing matters only*



This definition is from the Hate Crimes Statistic Act which requests state and local law enforcement agencies collect and report hate crimes data from their jurisdictions to the FBI's National Criminal Justice Information Services (CJIS). CJIS compiles the information from all jurisdictions and publishes the report each year in Oct./Nov. It breaks down hate crimes by victim/subject characteristic, geographic, jurisdiction, type of crime, etc.

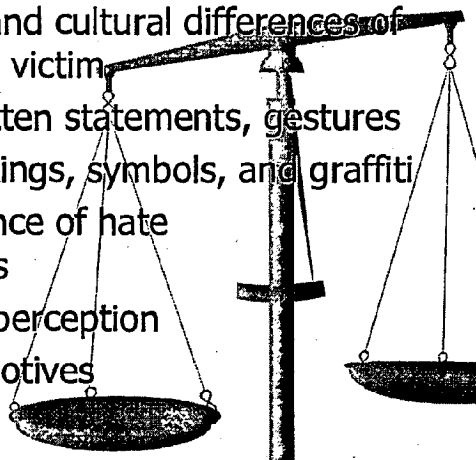
Participation is voluntary with approximately 70% state and local law enforcement participation.

Pass out a copy of the latest report and suggest the class review for state and localities familiar to them.



HATE CRIME INDICATORS

- Racial, ethnic, and cultural differences of perpetrator and victim
- Comments, written statements, gestures
- Drawings, markings, symbols, and graffiti
- Previous existence of hate crimes/incidents
- Victim/witness perception
- Lack of other motives

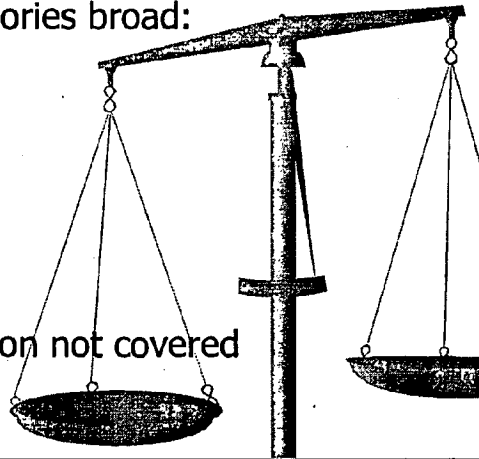


These indicators are meant to be just that and to have the investigator start to ask additional questions to determine the motive. It in no way states that all crimes with the listed indicators are hate crimes.



FAIR HOUSING ACT T 42 U.S.C. 3631

- Protected categories broad:
 - Race and color
 - Religion
 - National Origin
 - Family Status
 - Gender
 - Disability
- Sexual orientation not covered



In addition to previously mentioned categories, the Fair Housing Act provides protections for family status (e.g., family with children), gender, and disability.

Most real estate ads will include verbiage such as "All advertisements for the sale or rental of dwelling units published are subject to the federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status or national origin."



FAIR HOUSING ACT: Activities

- Occupancy, rental, financing, sale
- Helping others
- Associating with others in home
- Participating in speech or assembly supporting housing rights

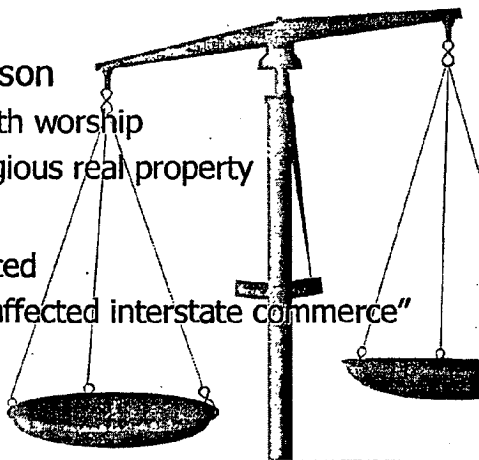


The protections of the Fair Housing Act extend beyond the person purchasing or renting the dwelling.



CHURCH ARSON PREVENTION ACT T 18 U.S.C. 247

- Broader than arson
 - Interference with worship
 - Damage to religious real property
- Two parts
 - Racially motivated
 - Offense "in or affected interstate commerce"



The Church Arson Prevention Act was passed in the Mid 1990's to address a rash of church fires which impacted a number of predominantly African-American churches located in the southern United States.

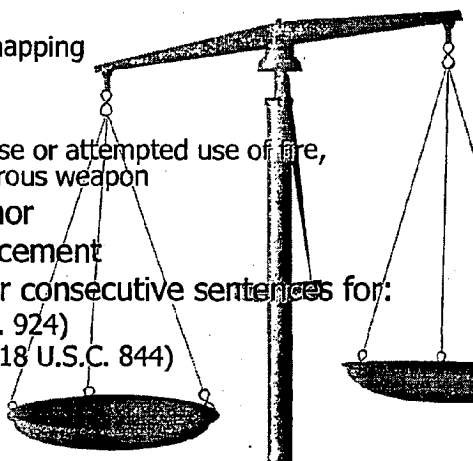
The Church Arson Prevention Act also makes it a federal crime to deface a house of worship or any religious real property. A number of these cases would typically be prosecuted locally as misdemeanors. Often these cases could be charged federally under the Church Arson Prevention Act and if appropriate as a Conspiracy, which is a mandatory 10 year sentence.

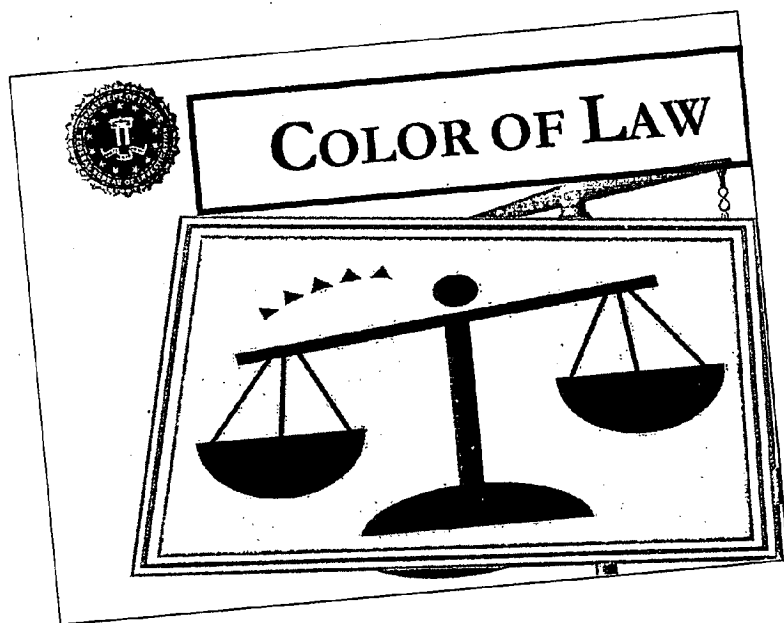
We must prove that there is a racial motivation or that the church is involved in inter-state commerce (e.g., facility is used for weddings, receptions, as a day-care). More than likely the items purchased for these events are shipped inter-state.



PENALTY STRUCTURE

- Death penalty/life
 - Murder, rape, kidnapping
- 10 year felony:
 - Bodily injury
 - Use, threatened use or attempted use of fire, explosives, dangerous weapon
- 1 year misdemeanor
- Sentencing enhancement
- Mandatory 10 year consecutive sentences for:
 - Firearm (18 U.S.C. 924)
 - Fire or explosive (18 U.S.C. 844)

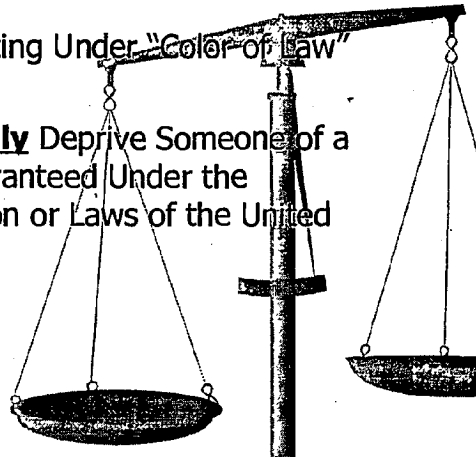






COLOR OF LAW T 18 U.S.C. 242

- Person Acting Under "Color of Law"
- To **Willfully** Deprive Someone of a Right Guaranteed Under the Constitution or Laws of the United States



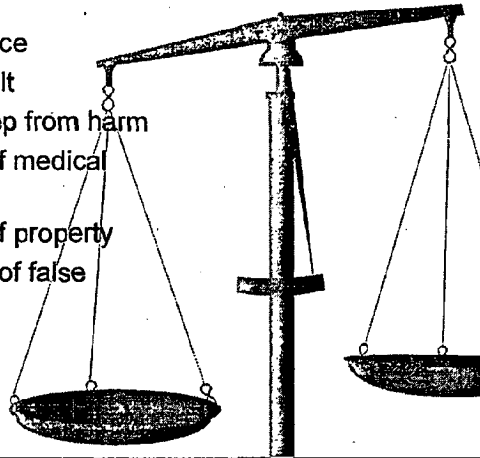
Emphasize **willful**, in other words the officer knew their actions were wrong at the time he/she acted. We are not second guessing how much force is used to gain control of someone who is non-compliant in an arrest situation.

Most of the prosecuted cases involve situations where **no** force is authorized.



PROTECTED RIGHTS

- Excessive force
- Sexual assault
- Failure to keep from harm
- Deprivation of medical attention
- Deprivation of property
- Presentation of false evidence
- False Arrest

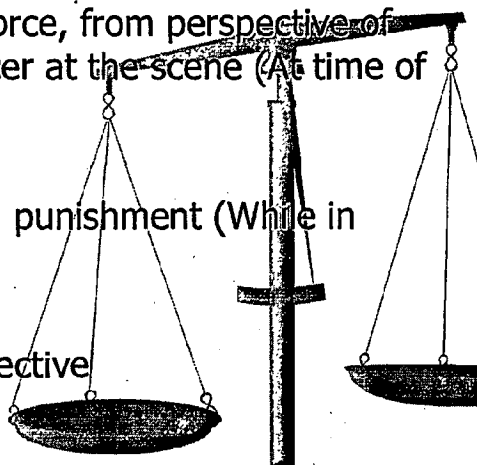


Discuss each type with examples of the type of behavior violates the law. Excessive force accounts for more than 90% of our COL cases. When discussing excessive force mention that the 4th Amendment addresses unreasonable force while being apprehended, the 14th Amendment addresses excessive force that amounts to punishment in an incarceration setting and the 8th Amendment addresses cruel and unusual punishment.



EXCESSIVE FORCE

- Unreasonable force, from perspective of reasonable officer at the scene (At time of arrest)
- Cruel & unusual punishment (While in custody)
- Often very subjective



Not acceptable to use 14th Amendment, Rights to Due Process, for all excessive force cases. Legal standard depends on when force was used.

4th Amendment protects against unreasonable force – from perspective of reasonable officer at scene of arrest

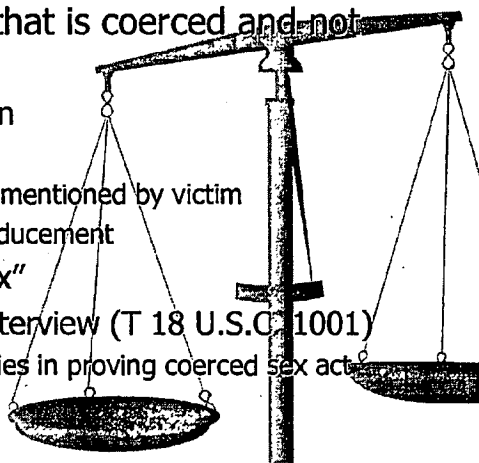
8th Amendment protects against cruel and unusual punishment for the purposes of causing harm or willful infliction of pain while in custody.

14th Amendment grants due process right to bodily integrity/excessive force that amounts to punishment.



SEXUAL ASSAULT

- Sexual contact that is coerced and not consented to
 - Proving coercion
 - Outcry
 - Circumstances mentioned by victim
 - Coercion vs. inducement
 - "Consensual sex"
 - Early subject interview (T 18 U.S.C. 1001)
 - Due to difficulties in proving coerced sex act



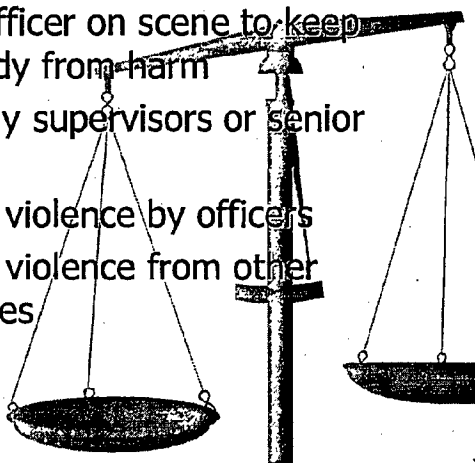
Although law enforcement's position has been that no sex in a prison setting should be considered consensual, many juries have disagreed. Therefore, proving coercion is a major obstacle in prosecuting these cases. Oftentimes coercion must be proven rather than mere inducement. The victim must believe that a right will be withheld if the sexual act is not conducted.

Inasmuch as these cases are extremely difficult, an early interview of the subject(s) may result in a guilty subject being charged with T 18 U.S.C. 1001 even if the coerced sex cannot be proven.



FAILURE TO KEEP FROM HARM

- Duty of every officer on scene to keep person in custody from harm
- Realistically, only supervisors or senior officers
- Protection from violence by officers
- Protection from violence from other inmates/arrestees



It is not expected that a lower ranking officer will stop the actions of an officer with a superior rank.

Example: In the Rodney King incident, Stacy Koon, a commanding officer did nothing to stop the officers from striking King. While he did not actually hit King, he had the responsibility to stop the others.

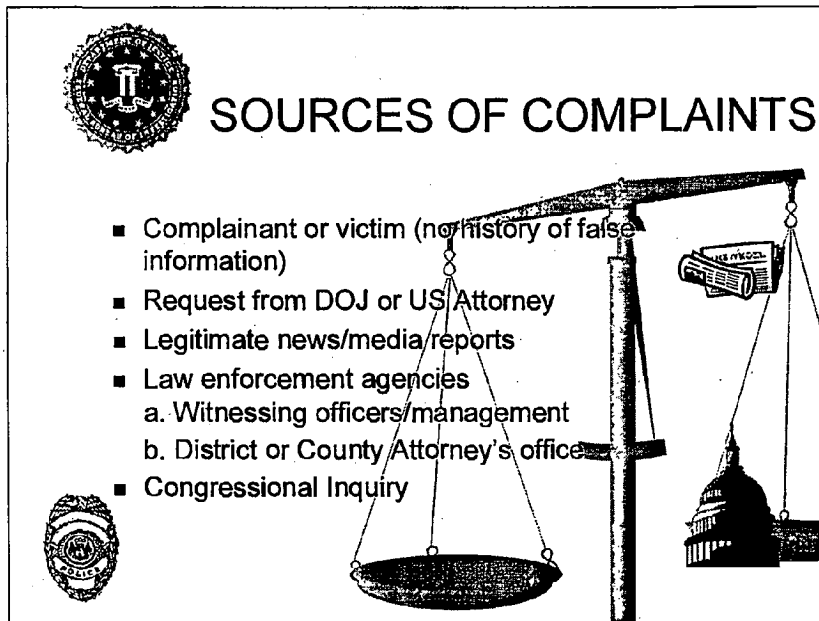


DEPRIVATION OF MEDICAL ATTENTION

- Right to medical treatment for serious medical needs
- Need to prove officer actually appreciated need for treatment
 - Officer commits assault and fails to provide treatment when it is clear treatment is needed
 - Specific person (officer or medical staff) fails to provide care for sick/injured inmate



Must be mindful of the willfulness element



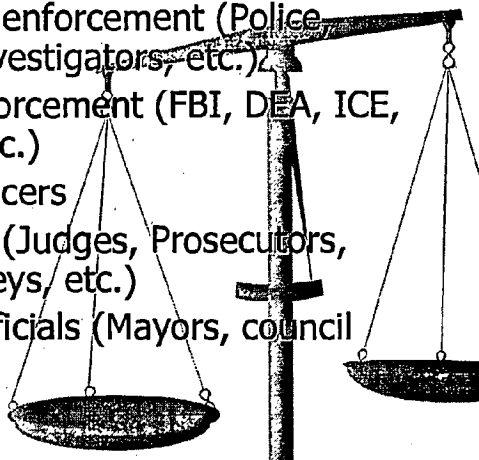
Listed above are some of the sources of complaints on civil rights cases. Of note is the fact that the FBI is mandated (by DOJ) to initiate investigations if the allegation would constitute a civil rights violation.

The criteria used is "any source not known to be unreliable".



THOSE INVESTIGATED

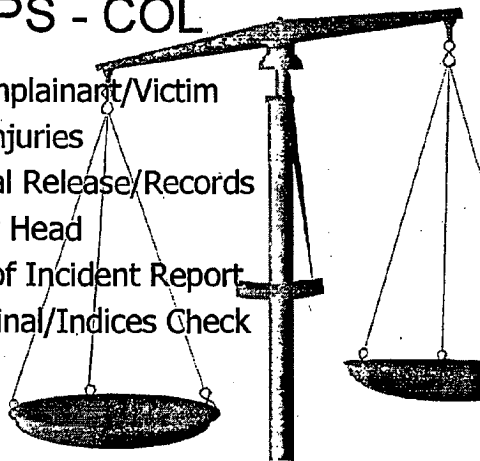
- State/Local law enforcement (Police, Sheriff, DA's Investigators, etc.)
- Federal law enforcement (FBI, DEA, ICE, USMS, BATF, etc.)
- Correctional officers
- Judicial officers (Judges, Prosecutors, Defense Attorneys, etc.)
- Other Public Officials (Mayors, council members, etc.)





REQUIRED INVESTIGATIVE STEPS - COL

1. Interview Complainant/Victim
2. Photograph Injuries
3. Obtain Medical Release/Records
4. Notify Agency Head
5. Obtain Copy of Incident Report
6. Conduct Criminal/Indices Check



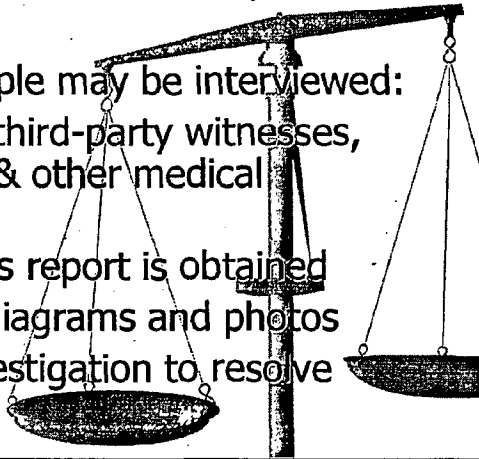
Again discuss how the preliminary investigation is designed to be the minimum necessary to establish the basic facts so that the Department of Justice can review the matter for prosecutive merit. It is important to emphasize that we are cognizant of the fact that while an officer is under investigation, it is often a significant burden for him/her and their department. Therefore, we make every effort to resolve the preliminary investigation within 30 days. Some of the issues for officers include: suspension, promotion, appointment to National Academy, refusal of mortgage/loan applications, personal stress, etc.



ADDITIONAL INVESTIGATIVE STEPS

(More Significant Investigations)

- Following people may be interviewed:
 - Subject(s), third-party witnesses, physicians, & other medical personnel
- Internal Affairs report is obtained
- Crime scene diagrams and photos
- Follow-up investigation to resolve discrepancies



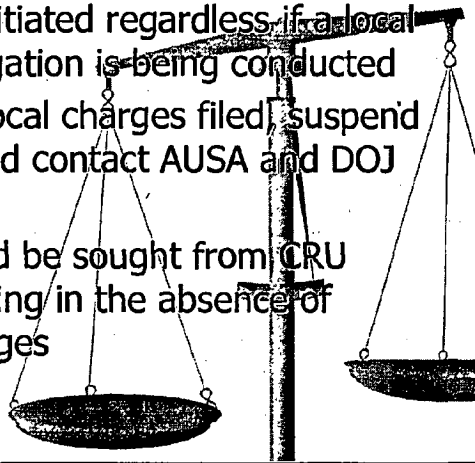
There are no specific steps which must be taken once the investigation goes beyond the preliminary investigative stages. Inasmuch as these cases are believed to have prosecutorial merit, the AUSA and DOJ Attorneys should be consulted on investigative steps taken.

When Internal Affairs reports are obtained, they should not be reviewed. They should be sealed, marked "Potential Garrity Material," and mailed to the United States Department of Justice. The Internal Affairs reports will be reviewed by a person not involved in the case, all Garrity Statements redacted and returned to the case agent.



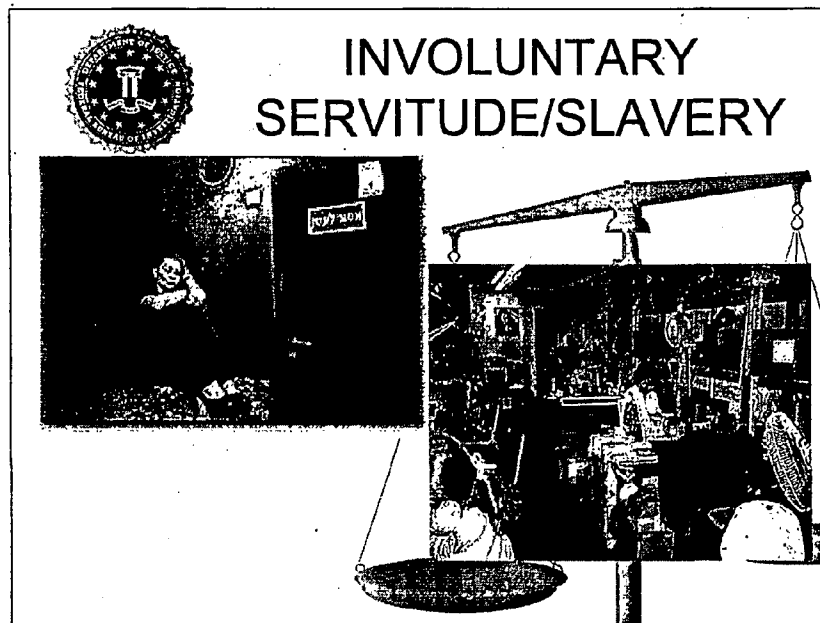
JOINT INVESTIGATIONS

- Investigation initiated regardless if a local or state investigation is being conducted
- When/if state/local charges filed, suspend investigation and contact AUSA and DOJ Attorney
- Authority should be sought from CRU before suspending in the absence of state/local charges



It is important to conduct the joint investigations, when possible, rather than simply monitor the state and local investigations. Often, the state and local investigators may have to prove different things than is required in the federal investigation.

If the state and local investigators refuse to work the case jointly, unless instructed by the CRU, the FBI should conduct a parallel investigation. The parallel investigation would terminate at such time as local charges are filed.

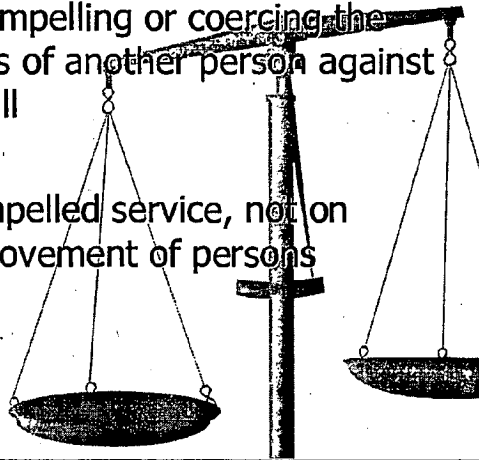


This is an ever-growing crime problem. Most times, state/local law enforcement will be first to encounter this type of activity (or suspect that it may be going on). This activity is not immediately apparent and may be initially viewed as a simple prostitution crime or an exploitative labor practice. If this activity is going on, only upon additional investigation does it become apparent that criminal behavior such as human trafficking or forced labor may be occurring.



WHAT IS TRAFFICKING?

- The crime of compelling or coercing the labor or services of another person against that person's will
- Focus is on compelled service, not on smuggling or movement of persons





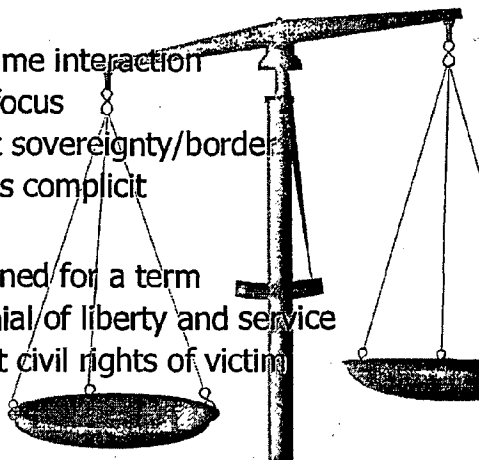
SMUGGLING VS. TRAFFICKING

■ Smuggling –

- generally one-time interaction
- transportation focus
- crime is against sovereignty/border
- person moved is complicit

■ Trafficking –

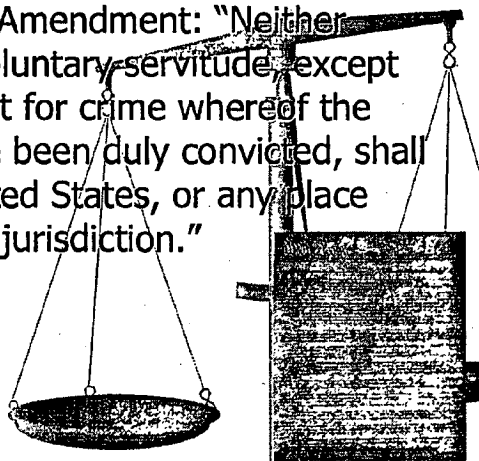
- Held or maintained for a term
- Focus is on denial of liberty and service
- Crime is against civil rights of victim





Legal Framework: Old Laws

- The Thirteenth Amendment: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in the United States, or any place subject to their jurisdiction."



Introduction to Human Trafficking/Involuntary Servitude matters.



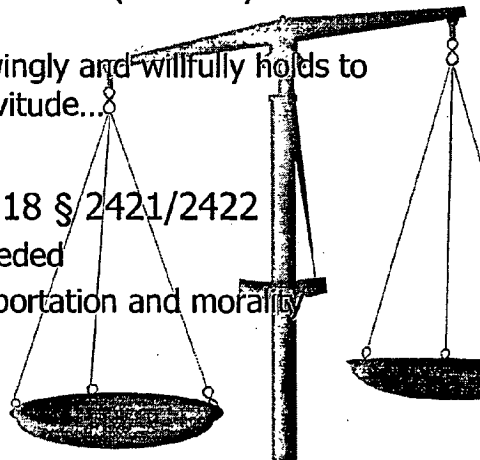
Pre-Trafficking Victim's Protection Act of 2000 (TVPA)

- Section 1584

- Whoever knowingly and willfully holds to involuntary servitude...

- Mann Act, Title 18 § 2421/2422

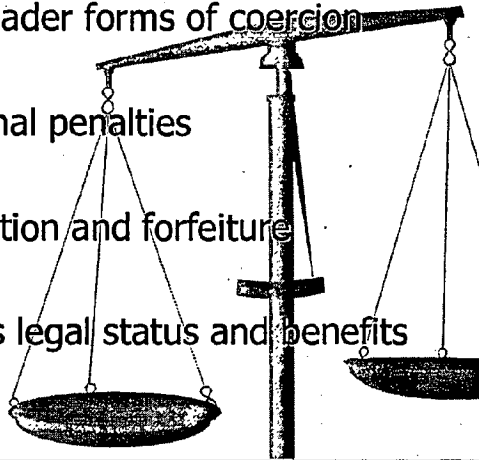
- No coercion needed
- Focus on transportation and morality





TVPA – Title 18 U.S.C. 1589 - 1594

- Criminalizes broader forms of coercion
- Increases criminal penalties
- Requires restitution and forfeiture
- Provides victims legal status and benefits





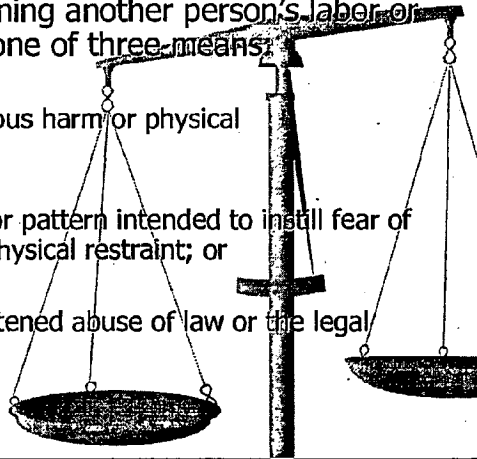
Forced Labor: 18 U.S.C. § 1589

- Providing or obtaining another person's labor or services through one of three means:

1) Threats of serious harm or physical restraint

2) Scheme, plan or pattern intended to instill fear of serious harm or physical restraint; or

3) Abuse or threatened abuse of law or the legal process



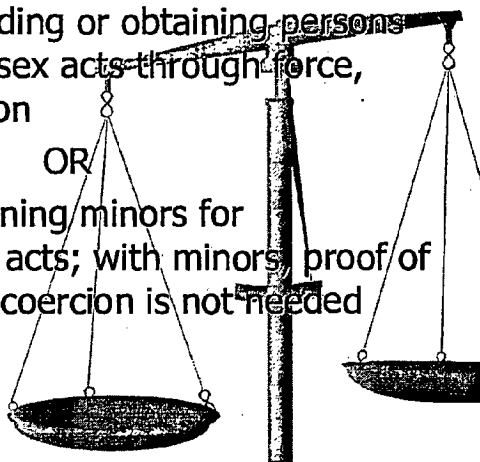


Sex Trafficking: 18 U.S.C. § 1591

Criminalizes providing or obtaining persons
for commercial sex acts through force,
fraud, or coercion

OR

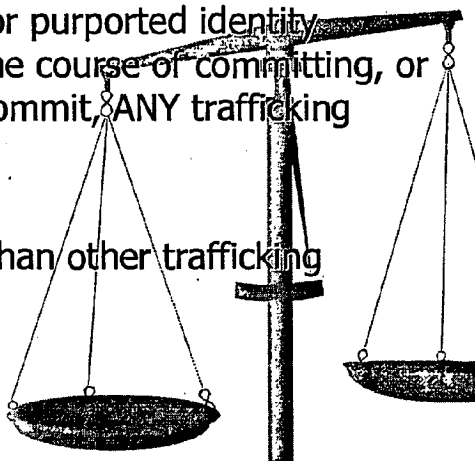
Providing or obtaining minors for
commercial sex acts; with minors, proof of
force, fraud, or coercion is not needed





Document Servitude: 18 U.S.C. 1592

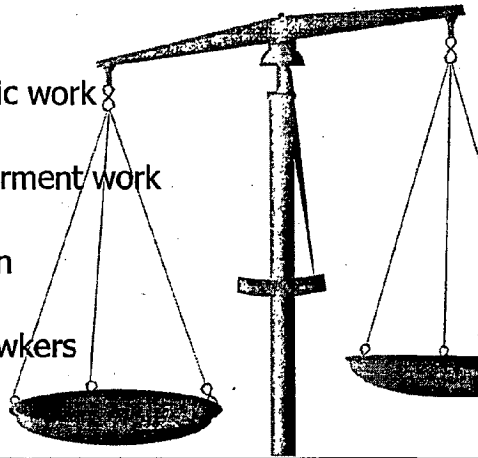
- Holding actual or purported identity documents in the course of committing, or with intent to commit, ANY trafficking crime
- Lower penalty than other trafficking crimes





Types of Compelled Service

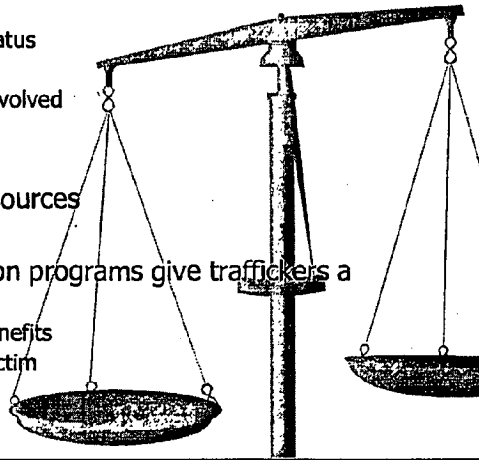
- Agricultural work
- Childcare/Domestic work
- Manufacturing/Garment work
- Forced prostitution
- Street peddler/hawkers





TRAFFICKING INVESTIGATION CHALLENGES

- Victims
 - Hidden because of status
 - Loyalties to subjects
 - Lack of trust for all involved
 - Language barrier
- Labor-intensive – resources
- TVPA victim protection programs give traffickers a defense at trial
 - Victim lying to get benefits
 - NGO "coaching" of victim



Our job is to make contact with local, state, and federal L.E., NGOs and Community Service Providers and educate them as to the responsibilities of the FBI in Civil Rights.

REMEMBER- Victims are hidden and wish to remain so because they consider themselves illegal aliens and are more afraid of law enforcement than the traffickers.

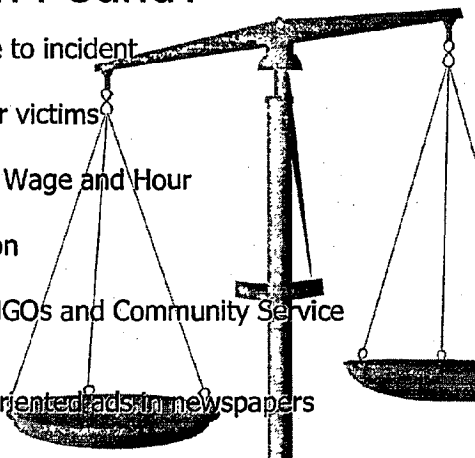
- They are torn by conflicting loyalties to their "master" and to being free
- They do not know who to trust- have been brainwashed by subject.
- Even if out in the open, i.e. Street prostitution, we do not recognize them.

DOJ Hotline



How Are Victims Most Often Found?

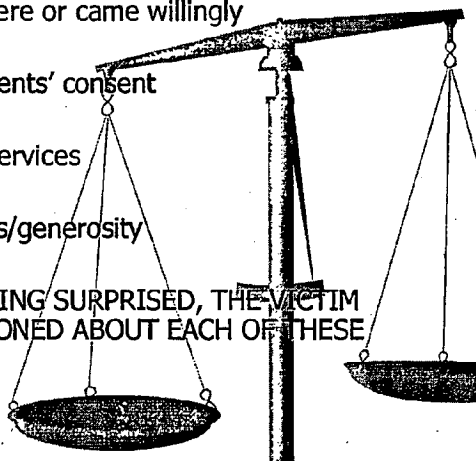
- Local LEA's response to incident
- "Outcry" from former victims
- Inspections by DOL, Wage and Hour
- Informant information
- Info received from NGOs and Community Service Providers
- Review of sexually oriented ads in newspapers





Non-Defenses

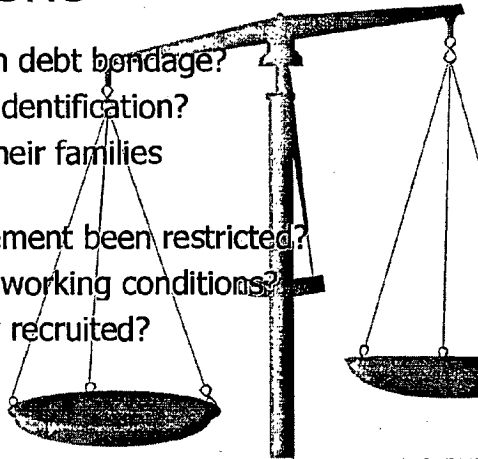
- Victim was already here or came willingly
- Initial consent or parents' consent
- Victim was paid for services
- Instances of kindness/generosity
- NOTE: TO AVOID BEING SURPRISED, THE VICTIM SHOULD BE QUESTIONED ABOUT EACH OF THESE ISSUES





KEY ELEMENTS FOR IDENTIFYING TRAFFICKED PERSONS

- Is the Person in debt bondage?
- Where is their identification?
- Were they or their families threatened?
- Has their movement been restricted?
- What are their working conditions?
- How were they recruited?

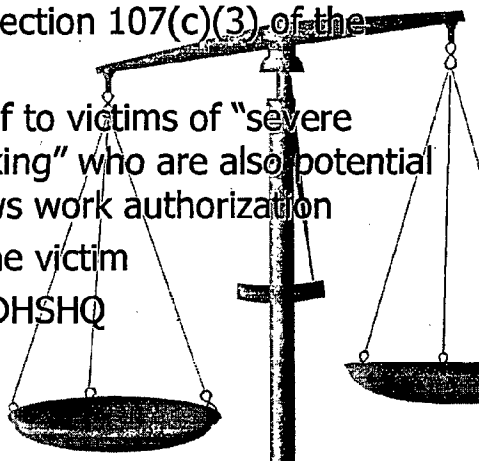


INDICATORS TO CONSIDER WHEN INTERVIEWING A POTENTIAL VICTIM.



CONTINUED PRESENCE

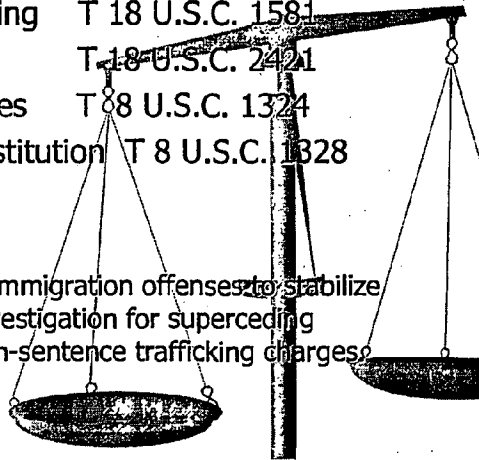
- Authorized by Section 107(c)(3) of the TPVA
- Temporary relief to victims of "severe forms of trafficking" who are also potential witnesses, allows work authorization
- LEA sponsors the victim
- Only issued at DSHQ



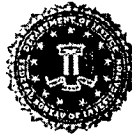


TRAFFICKING CHARGING DECISIONS

- Servitude/Trafficking T 18 U.S.C. 1581
- Mann Act T 18 U.S.C. 2421
- Smuggling Offenses T 8 U.S.C. 1324
- Harboring for Prostitution T 8 U.S.C. 1328
- Charge & Hold
 - Use Mann Act or immigration offenses to stabilize situation while investigation for superceding indictment on high-sentence trafficking charges

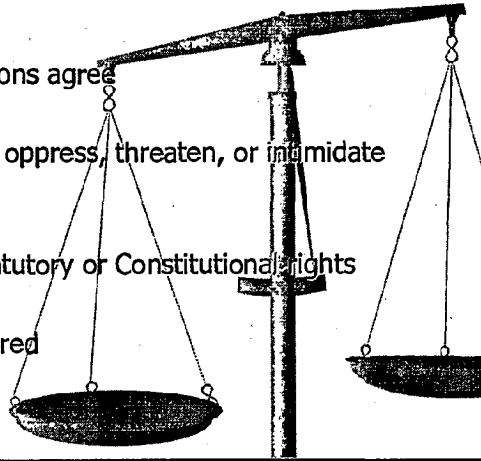


There are a number of federal statutes that may be used when persons are victims of trafficking. This slide shows a number of the statutes. Because the statutes address specific issues, the circumstances of the crime dictate which statute will be charged by the prosecutors.



Conspiracy Against Rights T 18 U.S.C. 241

- Two or more persons agree
- To willfully injure, oppress, threaten, or intimidate any person
- From enjoying Statutory or Constitutional rights
- No overt act required

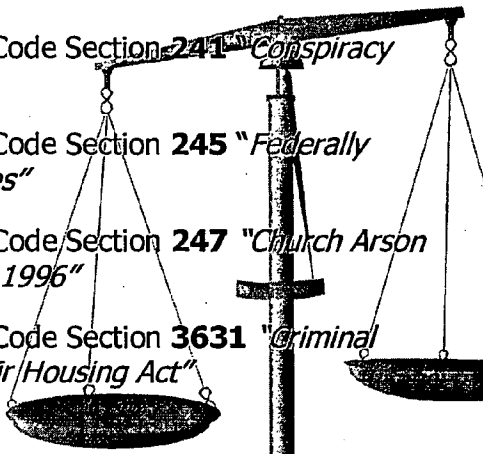


The Civil Rights Conspiracy statute is significant because it is always a 10 year felony regardless of the underlying crime or deprivation of rights. Two unique things regarding this statute are that first; there is no requirement that there be a conspiracy to commit a crime, and second there is no overt act requirement.

It is sufficient that two or more persons conspire to violate a right or privilege guaranteed by the constitution or by a federal statute.



FEDERAL CRIMINAL CIVIL RIGHTS STATUTES

- 
- 18 United States Code Section **241** "*Conspiracy Against Rights*"
 - 18 United States Code Section **245** "*Federally Protected Activities*"
 - 18 United States Code Section **247** "*Church Arson Prevention Act of 1996*"
 - 42 United States Code Section **3631** "*Criminal Interference— Fair Housing Act*"

- Most common federally prosecuted hate crimes are racially motivated
 - However, there is no federal law which prohibits racial violence per se; rather, the crime must be intended to interfere with the victim's federal rights or participation in a federally protected activity
 - Thus, many crimes must be prosecuted at state-level
- Federal remedies only protect victims who are threatened or attacked for exercising a federally protected right
- If in doubt over jurisdiction, contact the FBI or US DOJ, Civil Rights Division, Criminal Section

241: broadly prohibits conspiracies to injure any person in the free exercise of rights (in Constitution or US law)

245: examples: right to own property, make contracts, enjoy the use of public accommodations, vote, occupy a home, etc. without interference based on race, color, religion, or national origin

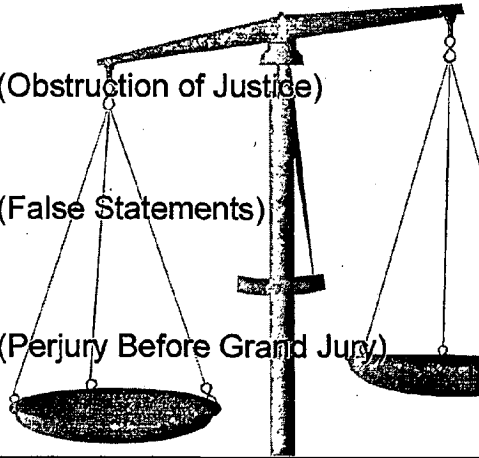
247: prohibits damaging or destroying religious property because of the religious nature of that property AND prohibits intentional obstruction by force or threat of force of any person in the free exercise of religious beliefs (NOTE: requires connection with interstate commerce, unless involving racial motivation)

3631: prohibits interference by force or threat of force with any person in selling, purchasing, renting, financing, occupying, or contracting for any dwelling due to that person's race, color, religion, sex, handicap, familial status or national origin.



OTHER FEDERAL STATUTES – CIVIL RIGHTS MATTERS

- 18 USC 1512 (Obstruction of Justice)
- 18 USC 1001 (False Statements)
- 18 USC 1623 (Perjury Before Grand Jury)

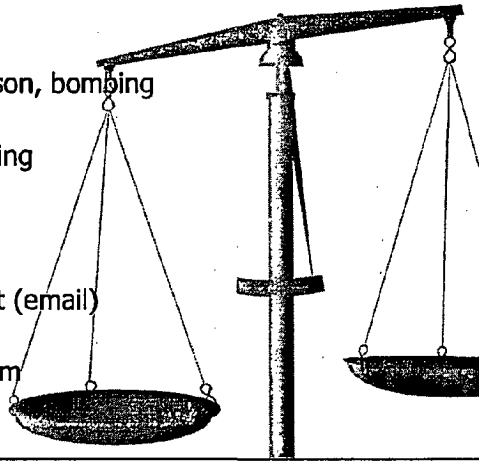


Emphasize the concern about their officers not turning a minor incident into a federal crime by obstructing justice/perjury. It is probably worth reiterating that many cases with federal prosecutive merit are not prosecuted federally, because the matter was dealt with either by a local prosecution or by sufficient administrative sanctions. The term is "vindicating the federal interest".



OTHER FEDERAL STATUTES – CIVIL RIGHTS MATTERS

- 844 (e): threat re arson, bombing
- 844 (i): arson, bombing
- 875: mail threats
- 876: interstate threat (email)
- 924 (c): use of firearm

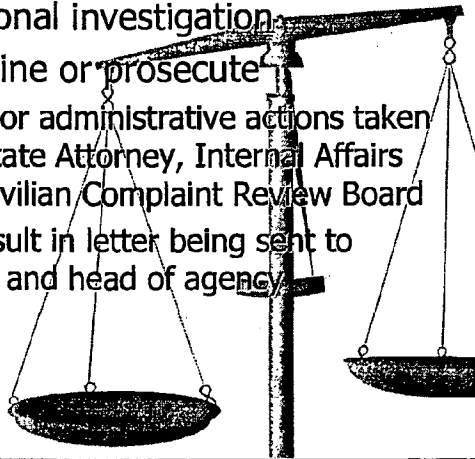


These statutes are also examined when charging decisions are being made.



DOJ REVIEW

- Requests additional investigation
- Decision to decline or prosecute
 - Weigh criminal or administrative actions taken by District or State Attorney, Internal Affairs Division, and Civilian Complaint Review Board
 - Declinations result in letter being sent to victim, subject, and head of agency



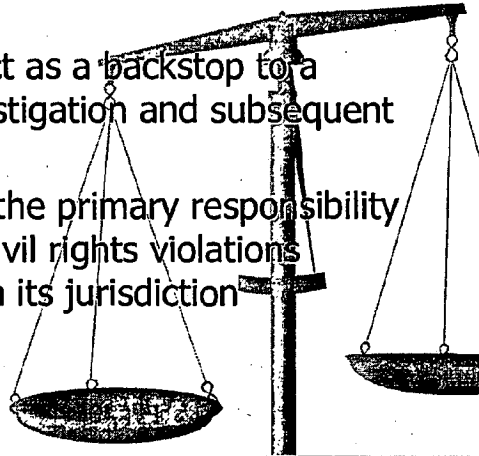
At the conclusion of the FBI's investigation, DOJ will decide whether it is necessary for the FBI to do additional investigation before a prosecutorial decision can be made. In those instances, DOJ will specify exactly what is needed by the FBI.

If the FBI's investigation is deemed complete by DOJ, they will be forced to render a decision whether to decline or prosecute.



FEDERAL CIVIL RIGHTS INVESTIGATIONS

- Premise is to act as a backstop to a local/state investigation and subsequent adjudication
- Each state has the primary responsibility to investigate civil rights violations occurring within its jurisdiction



The joint or parallel investigations conducted by the FBI enables DOJ to be apprised of the local prosecutions. Either when the locals fail to prosecute or there is an obvious miscarriage of justice does DOJ bring federal charges.



MEMORANDUM OF UNDERSTANDING

- MOU between National District Attorneys Association and DOJ to foster cooperation and early communication
- Explore most effective way to investigate and use investigative resources

