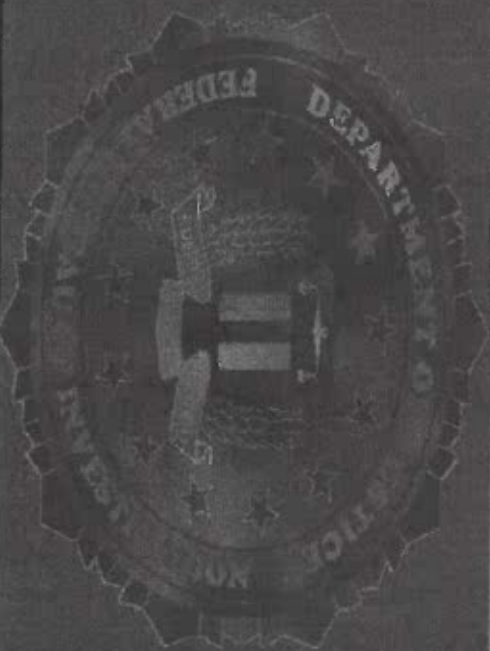


Color of Law Statutes



Federal Statutes

- Title 18 U.S.C. § 242 – Color of Law ✓
- Title 18 U.S.C. § 241 – Civil Rights Conspiracy ✓
- Title 18 U.S.C. § 1512 & 1519 – Obstruction of Justice ✓
- Title 18 U.S.C. § 1001 – False Statements ✓
- Title 18 U.S.C. § 1623 – Perjury before a GJ ✓



Title 18 U.S.C. § 242

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . "



Title 18 U.S.C. § 242

- Element 1: "Color of Law"
- Element 2: Intent: "Willfulness"
- Element 3: Violation of Constitutional or Statutory Right
- Misdemeanor unless:
 - Bodily injury or dangerous weapon (10 years)
 - Death results, kidnapping, aggravated sexual abuse

Element 1: "Color of Law"

Color of law means using or abusing legal authority

Tremendous power:

- Detain and arrest
 - Use force in certain situations
 - Search and seize property
 - Bring criminal charges
- FBI has primacy to ensure the power is not abused.



Color of Law Factors

- Clothing
- Duty Status (on or off)
- Use of issued equipment
- Display of badge
- Identified as police officer
- Commands
- Reason for dispute (personal vs official)





Element 2: Willfulness

- Specific intent to deprive of protected right.
 - Officer must act in open defiance or reckless disregard of right.
 - Officer need not know “source” of right or think in Constitutional terms.
- Officer must know act is wrong and do it anyway.

Evidence Of Willfulness

- Cover up/false statements
- Statements/bragging
- Departmental policies
- Training
- Nature of conduct
- Eyewitnesses (especially officers)
- Prior conduct
- Expert witnesses



Element 3: Deprivation of Rights





Protected Rights

Graham v. Connor: look to specific constitutional amendment

* same standard as for § 1983 liability

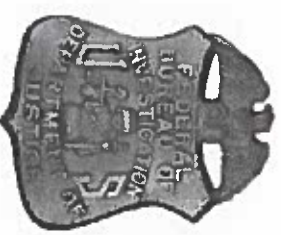
Fourth Amendment: unreasonable searches or seizures, including unreasonable force

Eighth Amendment: cruel and unusual punishment (convicted prisoners only)

Fourteenth Amendment: due process/force amounting to punishment (pretrial detainees and others)

Fourth Amendment Violations

- Unreasonable force
- Sexual assault
- False evidence
- Theft
- Denial of medical care
- Failure to keep from harm





Sexual Assault

- Sexual conduct that is coerced and not consented to.
 - Consent that is the product of coercion is not consent
 - De minimus exception; touching private areas (breasts, genitalia not de minimus)
 - Clearly no law enforcement objective involved
 - Pattern of conduct
- Non-law enforcement defendants



False Evidence

- Requires actual deprivation of liberty
- Not simply false report with no consequence
- Lies in official proceedings

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Theft

- Due Process clause requires legal procedures before property can be taken from an individual
- Burglaries, shakedowns of motorists



Medical Treatment

- Right to medical treatment for serious medical needs
- Need to prove officer actually appreciated need for treatment

Example: Officer commits assault and fails to provide treatment when it is clear treatment is needed



Failure to Keep from Harm

- **Duty of every officer to keep person in custody from harm.**
 - Protection from self-inflicted injuries
 - Protection from violence from other inmates/arrestees
 - Protection from violence by officers



Color of Law Violations - Statistics

- USA has 300+ million people
- 18,000 law enforcement agencies
- 765,000 sworn police officers
- 40 million people have contact with LE each year
- Use of force in 776,000 cases (1.9%)
- 71 convictions in 2014 (federal)



Complaint & Investigation Process

- No formal complaint procedure
 - Victim/witness complaint
 - News media
 - Referral from police department
- Investigation process
 - FBI investigation
 - Grand jury investigation



What to expect from your local FBI Office

- FBI Field Offices receive complaints daily – they are all assessed
 - most come from inmates
- FBI Field Office will use the least intrusive methods to evaluate an allegation
- Coordinate with DOJ Civil Rights Section (CRT) and/or local USAO
- Often, FBI will confer with CR AUSA for prosecutorial opinion based on allegation
- Usually, FBI/USAO will monitor how the state/local jurisdiction addresses the issue



What to expect from your local FBI Office

An FBI Field Office should open a case to monitor a matter, assist when appropriate, and present for prosecution if appropriate

Case Predication Thresholds:

- Assessment – Proactive limited inquiry
- Preliminary – Information or allegation
- Full – Articulate factual basis

No separate and parallel investigation unless it is believed the local/state investigation was incompetent, corrupt, incomplete, or influenced by outside factors (i.e. politics).

An FBI investigation could also be opened at the request of the incident agency because of conflict of interest or resource issues.

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