Uniting Against Hate

Michigan's aggressive effort to end hate crime violations through community partnerships

By Saul A. Green and Gary M. Felder

FAST FACTS

There is a great need to aggressively pursue civil rights and hate crime violators.

This article provides an overview of major federal criminal civil rights and hate crimes statutes.

There is a need for a coordinated response to fighting hate crimes through state and federal community coalitions.

There can be no serious understanding of our country's federal criminal civil rights laws without acknowledging the underlying principles upon which they are based. The following often quoted excerpt from Thomas Jefferson's Declaration of Independence—1776 establishes these principles with an eloquence that will endure: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Appreciating and accepting these "truths," which are "self-evident," and the related proposition that "all men are created equal" gives historic and inspirational background to our federal criminal civil rights laws.

This article provides a brief overview of the need to aggressively pursue civil rights and hate crimes violators in the federal criminal justice system. Additionally, it presents an overview of the major federal civil rights laws used by the Department of Justice and the United States Attorneys' Offices to prosecute civil rights and hate crimes violations and informs the public of a coordinated community response model created in Michigan to combat hate crimes.

THE NEED FOR AGGRESSIVE CIVIL RIGHTS AND HATE CRIMES LAW ENFORCEMENT

The Hate Crime Statistic Act of 1990[1] defines hate crimes as "crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson, and destruction, damage or vandalism of property." Thus, in large measure, the motivation behind the perpetration of a crime will determine its classification as a hate crime in the federal system.

In commenting on why hate crimes are different from other crimes and require aggressive law enforcement, the Bureau of Justice Assistance[2] notes:

> *the simple truth about hate crimes is that each offense victimizes not one victim but many. A hate crime victimizes not only the immediate target but every member of the group that the immediate target represents. A bias-motivated offense can cause a broad ripple of discomfiture among members of a targeted group, and a violent hate crime can act like a virus, quickly spreading feelings of terror and loathing across an entire community. Apart from their psychological impacts, violent hate crimes can create tides of retaliation and counter-retaliation. Therefore, criminal acts motivated by bias may carry far more weight than other types of criminal acts.*[3]

The Community Relations Service (CRS), an agency within the Department of Justice, is a highly "specialized Federal conciliation service available to State and local officials to help resolve and prevent racial and ethnic conflict, violence and Civil disorder."[4] The CRS provided in their publication, "Hate Crime: The Violence of Intolerance," important information regarding the devastating social costs resulting from hate crime violations:

> *Of all crimes, hate crimes are most likely to create or exacerbate tensions, which can trigger larger community-wide racial conflict, civil disturbances, and even riots. Hate crimes put cities and towns at-risk of serious social and economic consequences. The immediate costs of racial conflicts and civil disturbances are police, fire, and medical personnel overtime, injury or death, business and residential property loss, and damage to vehicles and equipment. Long-term recovery is hindered by a decline in property values, which result in lower tax revenues, scarcity of funds for rebuilding, and increased insurance rates. Businesses and residents abandon these neighborhoods, leaving empty buildings to attract crime, and the quality of schools decline due to the loss of tax revenue. A municipality may have no choice but to cut services or raise taxes or leave the area in its post-riot condition until market forces of supply and demand rebuild the area.*[5]

Hate crimes are not only devastating to the individual victim or victims of the crimes but can also, by design, extract a substantial detrimental cost against other individuals of the same group. Moreover, these crimes often negatively affect the society at large. Therefore, hate crimes are truly crimes against the community and the need for aggressive law enforcement in this area cannot be overstated.

LAWS USED TO PROSECUTE HATE CRIMES

The United States Attorneys' Offices and the Criminal Section of the Civil Rights Division have joint responsibility for enforcing criminal civil rights laws designed to preserve personal liberties. The prosecution efforts lie in four primary areas:

- Laws prohibiting persons acting under color of law, such as police officers, from interfering with, or conspiring to interfere with, an individual's federally protected rights
- The provisions of the 1968 Civil Rights Act which prohibit the racially motivated use of force or threat of force to injure or intimidate persons involved in the exercise of certain rights and activities
- The Freedom of Access to Clinic Entrances Act of 1994, which prohibits the use of force or threat of force against persons because they are seeking or providing reproductive health care services
- Other statutes which prohibit the holding of individuals in peonage or involuntary servitude

There are as many as 10,000 complaints and inquiries annually in the form of citizen correspondence, telephone calls, or personal visits to the Department of Justice, local United States Attorney's offices or, most commonly, the Federal Bureau of Investigation (FBI).

Official Misconduct Cases

A substantial portion of all federal civil rights prosecutions involves allegations of misconduct by law enforcement officers. The most recurrent allegation involves the use of excessive force. These are particularly difficult cases, for at least two reasons. First, the defendants in these cases are police officers, prison guards, and other public officials with whom most juries instinctively sympathize. The typical victims, by contrast, are arrestees, prison inmates, and other persons with disreputable backgrounds and little jury appeal. Second, the conduct at issue frequently is not unequivocally criminal, since the use of a certain amount of force is an inevitable and legitimate aspect of law enforcement. Nevertheless, these prosecutions must be pursued and often must be done at the federal level.

Christopher E. Stone, Director of the Vera Institute of Justice, notably observed:

Police in any society are accountable to their commanders, but in a democracy they must be accountable to others as well: to the legislature, to the press, to associations of citizens, and to the law. Citizens of a democracy should expect their police not only to enforce the law, but to respect it. Therefore, . . . when police themselves violate the criminal law, someone must prosecute them.

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The Civil Rights Division [of the United States Department of Justice] is not the most direct mechanism of police oversight in the nation, nor is it the primary mechanism on which the people of any single jurisdiction rely; but since its birth under President Eisenhower and maturation under President Kennedy and Johnson, the Division has been the most steady and longest lasting instrument of police accountability in the United States.[6]

Violations of 18 USC 242

The primary federal statute used in an excessive force case is 18 USC 242, which provides, in pertinent part:

Whoever, under color of any law . . . willfully subjects any person in any state, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . shall be [punished].

Section 242 is a Reconstruction era measure intended to "protect all persons in the United States in their civil rights, and furnish the means of their vindication." *Screws v United States.*[7] Contrary to common understanding, the principal portion of the law contains no racial element. A separate component of § 242 prohibits subjecting a person, under color of any law, "to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens."

This statute does not contain any direct mention of abusive police conduct. Rather, the statute is written broadly to encompass a variety of official misconduct that violates individual rights. However, the scope of the statute is limited in application by a strict specific intent requirement—"willfully"—that preserves the statute's constitutionality against claims of vagueness.

Only persons acting "under color of any law" may be prosecuted under § 242. The Supreme Court has defined action taken under color of law as "[m]isuse of power, possessed by virtue of state [or federal] law and made possible only because the wrongdoer is clothed with the authority of state [or federal] law." *United States v Classic.*[8] As this definition suggests, an official may act under color of law even though he or she exceeds the bounds of legal authority.[9]

Although § 242 is most commonly used to address abuses of authority by police officers, it potentially applies to any state or federal officer acting in an official capacity.[10] Certainly, being police officers or other public officials does not transform all of their personal actions into actions taken under color of law.[11] However, public officials who assert their official authority to accomplish a prohibited end may act under color of law even though they act for purely personal reasons.

Those who are not governmental officials may also, under certain circumstances, act under color of law. Private security guards, for example, act under color of law when they are "possessed of state authority and purport to act under that authority."[12] Furthermore, even purely private citizens may violate § 242 if they are "willful participant[s] in joint activity with the

About The Michigan Alliance Against Hate Crime

MIAAHC is governed by a 16-member steering committee composed of law enforcement agencies, civil rights organization, anti-violence advocates and representatives from various governmental agencies. It implements its model through five standing committees:

- Community Response—Charged with developing a response system to provide support, and receive and document complaints, monitor incidents, and facilitate resolutions
- Enforcement and Training—Develops and provides training for law enforcement officers and prosecutors on the nature of hate crimes and on investigation and prosecution techniques
- Education and Public Awareness—Develops hate crime education and prevention programs
- Data Collection and Trend Analysis—Develops improved system to collect and disseminate data on hate crime incidents, the perpetrators, victims, and the law enforcement and community response
- Victim Support—Develops a victim support advocacy system that advocates on behalf of victims and addresses the community that may be affected by hate crimes

Through meetings with law enforcement representatives, interested community members, civil rights advocates, government officials and educators, the MIAAHC mission and governing principles are being introduced throughout the state. It is the goal that alliances, similar to MIAAHC, are replicated in communities statewide. These partnerships will be armed with the fortitude and knowledge to fight hate crimes in their communities through effective enforcement, prevention, and victim support.

State or its agents." *United States v Price.*[13] In *Price*, where private individuals conspired with state officials to assault and murder three civil rights workers in Mississippi, the "nonofficial defendants" as well as the state actors were properly convicted of violating § 242.[14]

Section 242 is not, in itself, a source of any substantive rights. Instead, it serves as a vehicle for punishing violations of rights already "made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them."[15] In practice, the rights underlying § 242 prosecutions almost invariably stem from the Constitution and have been defined by case law, most often in the context of civil suits pursuant to the civil counterpart to § 242, 42 USC 1983.[16]

Although the right to be free from the use of unreasonable force is the primary constitutional right involved in § 242 cases, there is a wide panoply of constitutional rights protected under § 242.

The right to be free from sexual assaults: Individuals have a right to be free from sexual assaults committed under color of law just as they have a right to be free from other unreasonable physical assaults.[17]

Failure to keep a victim free from harm while in custody: The right to be free from excessive force while in official custody imposes upon the state and its officers a corresponding duty to protect those within its custody and control from lawless violence at the hands of other officers or third persons.[18] Accordingly, an officer may be held criminally liable for willfully failing to prevent others from violating the victim's rights.[19]

Rights implicated by coverups: Incidents of excessive force are frequently accompanied by other acts of official misconduct violative of individual rights, including attempts to "cover up" the unlawful assaults. Such actions may form the basis for additional charges in a civil rights prosecution and may bolster the case as a whole by conveying that the subject is a "bad cop" and not simply a good officer who had an isolated lapse of judgment.

Specifically, § 242 also encompasses the right not to have false evidence knowingly presented at an official proceeding by a law enforcement officer. This right is subsumed within the liberty protection of the Fourteenth Amendment, and means police officers who knowingly file false documents, such as police reports, or knowingly testify falsely at a preliminary hearing, trial, or other official proceeding in state or local court, can be prosecuted under § 242.[20] Similarly, an officer who intentionally makes a false arrest of a victim violates that victim's right to be free from arrest without probable cause. False arrest claims are analyzed under the Fourth Amendment.[21]

Other protected rights under 18 USC 242: Although the rights outlined above serve as the most common bases for civil rights prosecutions under § 242, any clearly delineated constitutional right can provide the necessary foundation.[22] For example, a police officer who steals money from an arrestee violates that person's right to be free from the deprivation of property without due process of law.[23]

A violation of § 242 is a felony offense punishable by a maximum of 10 years imprisonment and a fine of $250,000 if "bodily injury" results or if the acts committed in violation of the statute "include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire." The offense is punishable by imprisonment for any term of years or for life, or by a sentence of death, if the offending acts result in death or "if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill." If the acts committed in violation of the statute involve none of the specified aggravating factors, and if no injury results, the offense is a misdemeanor punishable by a maximum of one year in prison and a fine.

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Prosecuting Conspiracy in Official Misconduct Cases

Some cases involving alleged violations of § 242 also lend themselves to charges of conspiracy.[24] It is possible to charge a conspiracy to violate § 242 using the general criminal conspiracy statute, 18 USC 371. The civil rights conspiracy statute, 18 USC 241, is also available.

Section 241 provides:

> *If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . . [t]hey shall [be punished.]*

Like § 242, § 241 is a Reconstruction era measure whose "purpose and effect . . . was to reach assaults upon rights under the entire Constitution, including the Thirteenth, Fourteenth and Fifteenth Amendments."[25] To establish a violation of § 241, the prosecution must prove that the defendant agreed—either tacitly or expressly—to injure, oppress, threaten, or intimidate a person for the purpose of interfering with a specific right secured by federal law or the Constitution.[26]

Aside from the element of conspiracy, or agreement, which is similar to established § 371 law, § 241 involves essentially the same analysis as its substantive counterpart, § 242. As with § 242, any defined federal right may serve as the basis for a § 241 prosecution.[27] Also, while § 241 by its terms does not require a showing that the defendant acted "willfully," the Supreme Court has held that the "Screws" specific intent analysis, applicable to § 242 prosecutions, also extends to conspiracy prosecutions under § 241.[28] Technically, § 241 differs from the general conspiracy statute, 18 USC 371, in that § 241 contains no "overt act" requirement.[29]

The penalty structures for § 371 and § 241, however, supply a more meaningful basis for distinction. The character of a § 371 offense hinges upon that of the underlying offense. Where the substantive count is a misdemeanor (for example, where there is no resulting injury), the § 371 count is also a misdemeanor offense. Even if the underlying conduct is a felony offense, the § 371 count, although a felony, is punishable by a maximum term of imprisonment of five years. A § 241 conspiracy, by contrast, is always a felony offense, even if the substantive offense is a misdemeanor. A conviction under § 241 carries a potential 10-year term of imprisonment and if death results, or if the defendants' actions in connection with the conspiracy include kidnapping or sexual abuse, or attempted kidnapping, sexual abuse or murder, the offense is punishable by imprisonment for any term of years or for life, or by death.

Crimes with a Racial or Prohibited Animus

The most common "hate crimes" prosecuted federally are those with racial motivation. However, there is no federal law specifically prohibiting racial violence. There are racially motivated crimes that simply cannot be reached under federal jurisdiction and must be prosecuted by the states.[30] Current federal law reaches only racially motivated violence intended to interfere with the victim's federal rights or participation in a federally protected activity. Federal rights protected against interference by private parties are limited.

Racial motivation is not the only basis for a civil rights prosecution. Housing discrimination is prohibited on a broad number of grounds and violence and intimidation against people, based on their religion and national origin can be prosecuted under certain circumstances. In addition, violence, threats, or obstruction of persons seeking or providing reproductive health services are prosecutable under the Freedom of Access to Clinic Entrances Act, enacted in 1994. Finally, in the Federal Sentencing Guidelines, § 3A1.1 includes a three point adjustment in any federal prosecution if the victim was selected because of "race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation."

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Racial Violence Involving Housing

The criminal portion of the Fair Housing Act of 1968, 42 USC 3631, prohibits housing-related violence on the basis of race, color, religion, sex, handicap, familial status, and national origin. The violence usually prosecuted under this section includes cross-burnings, firebombings, arsons, gunshots, rock-throwing, or vandalism. The statute reaches people involved at any stage of the housing transaction, such as sellers, buyers, landlords, tenants, and real estate agents.

A violation of § 3631 is a misdemeanor punishable by one year of imprisonment and a fine, unless one of the following additional elements are proven: the defendant's conduct 1) resulted in bodily injury or death, 2) included use, attempted use, or threatened use of a dangerous weapon, explosive, or fire, or 3) included acts or attempts of kidnapping, aggravated sexual abuse, or an attempt to kill. The existence of these elements may make the violation punishable by a fine and 40 years of imprisonment or any term of years, including life.

Racial Violence Not Involving Housing

In racial violence cases that do not involve housing, 18 USC 245 is the statute most likely to reach the questioned conduct. Section 245 prohibits the use of force or threats of force against individuals engaged in certain specific activities because of the

individuals' race, color, religion, or national origin. As previously stated, violence motivated by racial or other prohibited animus alone is not sufficient. Rather, the government must prove that the defendant also acted because the victim was engaged in one or more of the activities specifically designated by the statute for protection.

Section 245(b)(2) protects the following activities from interference based on racial or other prohibited animus:

- The right to enroll in public school or college
- The right to participate in any benefit, service, program, facility or activity provided or administered by the state or any subdivision of the state
- The right to apply for or enjoy employment by any private employer or state or local agency, or the right to join or use the services of any labor organization, hiring hall, or employment agency
- The right to serve as a grand or petit juror in the court of any state
- The right to travel in or use a facility of interstate commerce
- The right to enjoy the goods or services of any place of public accommodation

Section 245 also protects some activities without regard to racial or other prohibited animus. See 18 USC 245(b)(1). These activities include:

- Voting or qualifying or campaigning as a candidate
- Using facilities or programs administered by the United States
- Any prerequisite of employment by any agency of the United States
- Serving as a grand or petit juror in any United States court
- Using the benefits of any program receiving federal financial assistance

The maximum penalties under this statute always include a fine and one year if no bodily injury results; 10 years if bodily injury results or dangerous weapons, explosives or fire are used or threatened during the offense; and life or the death penalty if death results from the acts committed or if kidnapping, sexual abuse, or killing is committed or attempted during the offense.

Damage to Religious Property and Obstruction of the Free Exercise of Religion

18 USC 247 was enacted to cover both damage to religious property and obstruction of persons in the free exercise of their religious beliefs by force or threat of force.

The maximum penalty for violating 18 USC 247, depending upon the aggravating circumstances, can be a fine, imprisonment, including a life term, or the offender may be sentenced to death.

18 USC 248, the Freedom of Access to Clinic Entrances Act ("FACE") discussed below, was enacted to protect abortion clinics and abortion providers from threats and violence. However, this act also contains provisions to prevent interference with the free exercise of religion.

Involuntary Servitude and Slavery

Involuntary servitude, a term synonymous with slavery, means a condition of compulsory service or labor performed by one person, against his will, for another person. When private actors force others to work against their will, the most likely criminal statute under which to prosecute the conduct is 18 USC 1584.

In *United States v Kozminski,*[31] the Supreme Court set forth the most definitive statement of what conduct could be criminally prosecuted as involuntary servitude or slavery. *Kozminski* requires the government to prove not only that the victim was held against his will, but states that either force, threats of force, or threats of legal coercion are "necessary incident[s] of a condition of involuntary servitude."[32]

In this respect, however, the Court also found that not all persons are of like courage and firmness. Therefore, "the vulnerabilities of the victim are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve."[33] The background, education, and station in life of the victim and defendant and the relative inferiority or inequality between the person who performs the service and the persons exercising the force to compel its performance are material in this determination.

Violence Against Reproductive Health Providers and Clinics

On May 26, 1994, the Freedom of Access to Clinic Entrances Act of 1994 (FACE) was signed into law. The purpose of FACE is to protect people who provide and obtain reproductive health services from violent, threatening, obstructive, and destructive conduct that is intended to injure or intimidate them or to interfere with their right to provide or obtain such services. FACE provides that anyone who uses "force," the "threat of force," or "physical obstruction," to intentionally injure, intimidate, or interfere with those obtaining or providing reproductive health services, or who attempts to do so, shall be subject to criminal penalties and civil remedies.

The maximum penalties for violating this statute always include a fine and one year for a first offense with no bodily injury to the victim, three years for a subsequent offense with no bodily injury, 10 years if bodily injury results, and life if

death results. Offenses involving exclusively nonviolent physical obstructions are punished by a maximum of six months imprisonment for a first offense and 18 months for a subsequent offense.

FIGHTING HATE CRIMES THROUGH COORDINATED COMMUNITY PARTNERSHIPS

The 1998 Federal Bureau of Investigation Uniform Crime Report showed 7,755 hate incidents reported nationwide. The incidents involved 9,235 separate offenses, 9,722 victims, and 7,489 known offenders. There were 578 incidents reported in Michigan during 1998, involving 620 victims. Although these numbers aren't staggering, when you consider that hate crimes not only victimize the target but also every member of the group the target represents and the resulting costs to our communities, the need for a coordinated response that includes law enforcement, community organizations, civil rights organizations, the faith community, educators, and business leaders is clear.

These crimes can be particularly devastating not only because of the significant cost to the victims but also because of the polarizing effect these crimes have on a community.

In Michigan, we have taken just such a coordinated approach. The Michigan Alliance Against Hate Crimes (MIAAHC), established in 1998, was born out of a collaboration between the Michigan Department of Civil Rights and the United States Attorneys for the Eastern and Western Districts of Michigan.

In 1994, the governor of the state of Michigan responded to reports of increased hate and violence by requesting the Michigan Civil Rights Commission and Department of Civil Rights to establish the Bias Crime Response Task Force. The task force, a diverse group representing populations victimized by bias crimes as well as other interested agencies and governmental units, developed a comprehensive report that outlined best practices for combating hate crime. In early 1997, the Department of Justice at the direction of the Attorney General began an initiative to address hate crime. The Department of Justice recommendations completed in October were used on November 10, 1997 by President Clinton during the White House Conference on Hate Crimes. The Michigan Department of Civil Rights participated in the White House Conference.

Following the conference, the president and attorney general directed each of the nation's United States Attorneys to establish a statewide working group to coordinate hate crimes enforcement and encourage hate crime prevention and education. Soon after, the director of the Michigan Department of Civil Rights, several members of the Civil Rights Commission, and the United States Attorneys for the Eastern and Western Districts of Michigan met to begin mapping out a structure and strategy for MIAAHC, a partnership of more than 50 federal, state, and local law enforcement, civil rights organizations, community groups, educators and anti-violence advocates committed to a coordinated statewide effort against hate crimes.

The premise of MIAAHC is that hate crimes pose a unique danger to our society. These crimes can be particularly devastating not only because of the significant cost to the victims but also because of the polarizing effect these crimes have on a community. Because of the unique danger hate crimes pose, MIAAHC not only tries to foster an effective law enforcement response, but has also developed an overall community response model that targets education and prevention strategies, as well as support for the victims of hate crimes.✦

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FOOTNOTES

1. Codified at 28 USC 534.
2. The Bureau of Justice Assistance is a component of the U.S. Department of Justice Office of Justice Programs.
3. Bureau of Justice Assistance: A Policymaker's Guide to Hate Crimes, Monograph, 1997, p x.
4. CRS Bulletin "Hate Crime: The Violence of Intolerance" p 1.
5. CRS Bulletin "Hate Crime: The Violence of Intolerance" p 1.
6. Prosecuting Police Misconduct, Reflections on the Role of the U.S. Civil Rights Division (1998, p 3). The Vera Institute of Justice is a nonprofit organization dedicated to making government policies more fair, humane, and efficient for all people.
7. *Screws v United States*, 325 US 91, 98 (1945) (quoting legislative history).
8. *United States v Classic*, 313 US 299, 326 (1941). See also *United States v Price*, 383 US 787, 794 n 7 (1966) ("under color of law" means the same thing in § 242 as in § 242's civil counterpart, 42 USC 1983).
9. *Screws*, 325 US at 110–11 ("Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it."). Under "color" of law means, simply, under "pretense" of law. *Id.*

10. See, e.g. *United States v Dise*, 763 F2d 586 (CA 3) (upholding the conviction of an aide at a state institution for retarded persons, under § 242, for intentionally battering inmates), *cert den*, 474 US 982 (1985).
11. See *Screws*, 325 US at 111. *Id.*
12. See *Griffin v Maryland*, 378 US 130, 135 (1964).
13. *United States v Price*, 383 US 787, 1155 (1966).
14. *Id.* at 1156–58. See also *United States v Sellers*, 906 F2d 597 (CA 11, 1990).
15. *Screws*, 325 US at 104. *Id.*
16. See *United States v Reese*, 2 F3d 870, 884–89 (CA 9, 1993) (recognizing 42 USC 1983 as an authoritative source of rights which may underlie § 242 prosecutions), *cert den*, 114 S Ct 928 (1994); *United States v Bingham*, 812 F2d 943 (CA 5, 1984) (recognizing that Congress intended the criminal civil rights statutes, 18 USC 241 and 242, to cover the same cases as 42 USC 1983, though providing different remedies).
17. See, e.g., *Doe v Taylor Indep Sch Dist*, 15 F3d 443, 451 (CA 5) (en banc) (holding, in a § 1983 case, that a teacher's sexual abuse of a student "deprived [the student] of a liberty interest recognized under the substantive due process component of the Fourteenth Amendment"), *cert den*, 115 S Ct 70 (1994); *Stoneking v Bradford Area Sch Dist*, 882 F2d 720, 726–27 (CA 3, 1989), *cert den*, 493 US 1044 (1990) (holding that the constitutional right to freedom from invasion of one's personal security through sexual abuse is well-established); *United States v Contreras*, 950 F2d 232 (CA 5, 1991) (affirming a § 242 conviction against a police officer who sexually assaulted a detainee, without questioning the validity of the charge), *cert den*, 504 US 941 (1992); *United States v Davila*, 704 F2d 749 (CA 5, 1983) (affirming § 242 convictions against two border patrol agents for sexually abusing two women they had detained, also without questioning the validity of the charge).
18. E.g., *Lynch v United States*, 189 F2d 476 (CA 5), *cert den*, 342 US 831 (1951); *United States v Koon*, 34 F3d 1416, 1446–49 & n 25 (CA 9, 1994); *United States v Reese*, 2 F3d 870, 887–90 and n 24 (CA 9, 1993) (collecting cases). See also *DeShaney v Winnebago Co Dept of Soc Servs*, 489 US 189, 199–200 (1989).
19. E.g., *Lynch*, 189 F2d at 478–80; *Reese*, 189 F2d at 887–90; *Koon*, 34 F3d at 1446–49; *United States v McKenzie*, 768 F2d 602, 605–06 (CA 5, 1985), *cert den*, 474 US 1086 (1986).
20. See *United States v Reese*, 2 F3d 870 (CA 9, 1993).
21. See *Albright v Oliver*, 114 S Ct 807 (1994) (stating that false arrest claim must be analyzed under the Fourth Amendment, rather then under the realm of substantive due process).
22. *Screws v United States*, 325 US 91, 104–05 (1945). *Id.*
23. See *United States v Reese*, 2 F3d 870, 878–79 (CA 9, 1993). *Id.*
24. See e.g., *United States v Reese*, 2 F3d 870 (CA 9, 1993).
25. *United States v Price*, 383 US 787, 805 (1966).
26. E.g., *Anderson v United States*, 417 US 211, 222–28 (1974); *Reese*, 2 F3d at 893.
27. *Price*, 383 US at 797.
28. *Anderson*, 417 US at 223; *Price*, 383 US at 806 n 20 (noting that there is "no basis for distinction" between § 241 and § 242 with respect to the specific intent requirement).
29. E.g., *United States v Skillman*, 922 F2d 1370, 1375 (CA 9, 1990), *cert den*, 502 US 922 (1991); *United States v Morado*, 454 F2d 167, 169 (CA 5), *cert den*, 406 US 917 (1972). See also *United States v Shabani*, 115 S Ct 382 (1994) (holding that the drug conspiracy statute, 21 USC 846, does not require proof of overt act, since the statute, like § 241, is silent about such a requirement).
30. For example, see MCLA 750.147. Denial of equal public accommodations.
31. *United States v Kozminski*, 487 US 931 (1988).
32. *Id.*, 487 US at 952.
33. *Kozminski*, 487 US at 952.

Pro Bono Honor Roll CIRCLE OF EXCELLENCE

In 1991, former State Bar President James K. Robinson encouraged law firms, corporations, and organizations to endorse the Voluntary State Bar Pro Bono Standard adopted by the Representative Assembly and to adopt written policies for their lawyers. Over the years many law firms, corporations and organizations have done this and more. The *Pro Bono* Involvement Committee (PBIC) of the State Bar of Michigan salutes such commitment to *pro bono* service. However, beginning this year, for the new millennium, the PBIC would like to particularly recognize those who have gone beyond a written *pro bono* policy. Thus, some changes have been made to recognize the following firms, corporations, or organizations in the Pro Bono Honor Roll Circle of Excellence.

The following are firms, corporations, and organizations who have demonstrated to the PBIC that they have put their *pro bono* policies into practice, documenting a high level of participation by their affiliated lawyers. They have provided *pro bono* service collectively through donations of *pro bono* time or financial contributions or both to bring every affiliated attorney into compliance with the Voluntary Pro Bono Standard. On average, each attorney has contributed at least 3 cases or 30 hours of representation to low-income individuals or organizations or a financial donation of at least $300 to a nonprofit program organized for the purpose of delivering civil legal services to low-income individuals.

Large Firms

Barris, Sott, Denn & Driker, PLLC
Bodman, Longley & Dahling, LLP
Dickinson Wright, PLLC
Dykema Gossett, PLLC
Howard & Howard Attorneys, PC
Kerr, Russell & Weber, PLC
Kreis, Enderle, Callander & Hudgins, PC
Miller, Canfield, Paddock & Stone, PLC
Miller, Johnson, Snell & Cummiskey, PLC
Sachs, Waldman, O'Hare, Helveston, Bogas & McIntosh, PC
Varnum, Riddering, Schmidt & Howlett, LLP

Small Firms

Bos & Glazier, PLC
David M. Thoms & Associates, PC
Morganroth, Morganroth, Jackman & Kasody, PC
Soble & Rowe, LLP

Corporations

Dow Corning Corporation
Ford Motor Company
General Motors Corporation

Currently, the Circle of Excellence honorees have been categorized into "Large firms" (those having more than 10 attorneys) and "Small firms" (those having between 2-10 attorneys). However, changes may be made as the Circle of Excellence continues to grow. Solo practitioners and individual attorneys who meet the Voluntary State Bar Pro Bono Standard through a legal services or a *pro bono* program will be listed in the annual Pro Bono Honor Roll.

Every reader is encouraged to initiate steps within the firm, corporate legal department, or organization with which he or she is associated to adopt a *pro bono* policy and lead efforts in its implementation. If you need any assistance in this area or would like an application for your firm or organization into the Circle of Excellence, please contact the *Pro Bono* Involvement Committee (Attn: Kelly Quardokus or Sylvia Foya) at the State Bar of Michigan at 306 Townsend, Lansing, MI 48933.