

HATE CRIMES INVOLVING THE FAIR HOUSING ACT

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Fair Housing Act of 1968

42 U.S.C. § 3631

The elements of a § 3631 violation are as follows:

- The accused used force or threat of force.**
- The accused injured, intimidated or interfered with, or attempted to injure, intimidate or interfere with the victims' right to purchase and occupy a dwelling.**
- The accused acted as he did on account of the [race] of one or more of the victims and because one or more of the victims were purchasing and about to occupy a dwelling.**
- The accused acted willfully.**

Fair Housing Act of 1968

42 U.S.C. § 3631

A violation of § 3631 is a misdemeanor, unless one of the following additional elements are proven:



- 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

Section 3631 prosecutions have been brought in a variety of housing-related incidents. The most common prosecution under this section occurs when an African-American family moves into a formerly all-white neighborhood and becomes the target of racial epithets and violence.



The following cases illustrate some of the incidents covered by the statute:

Juveniles who burned crosses in proximity of African-American family's home four months after they moved in.

United States v. J.H.H., 22 F.3d 821
(8th Cir. 1994).



Firebombing by neighbors of a house one month after an African-American family moved in. *United States v.*

Redwine, 715 F.2d 315 (7th Cir. 1983).



Firing gun into black family's home. *United States v. McClinnis*, 976 F.2d 1226 (9th Cir. 1992).



Ku Klux Klan members beat residents in their home because of recent interracial dating. *United States v. Wood*, 780 F. 2d 955 (11th Cir. 1986).

Interference with adoption agency placement of African-American children in homes. *United States v. Gilbert*, 884 F. 2d 454 (9th Cir. 1989).



Conspiracy Against Rights

18 U.S.C. § 241

Where hate crimes involve a conspiracy, they are generally charged under 18 U.S.C. Section 241, Conspiracy Against Rights, which is a ten year felony charge. The maximum penalty is 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 commission of the offense.

Prosecuting under Title 18, United States Code, Section 241

Section 241 is the civil rights conspiracy statute. It prohibits persons from forming agreements directed at interfering with rights guaranteed by the Constitution or laws of the United States.

Conspiracy Against Rights

18 U.S.C. § 241



The elements of § 241 are :

- Two or more persons must conspire;**
- The purpose of the conspiracy must be to injure, oppress, threaten or intimidate one or more persons;**
- The conspiracy must be directed at the free exercise or enjoyment of a right secured or protected by the Constitution or laws of the United States.**
- Where the underlying right is 42 U.S.C. § 1982, Fair Housing Act, the citizenship of the victim must also be proven.**

The language of Section 241 is extremely broad. The prosecuting attorney must determine what underlying right is involved and whether that right is protected against private, as opposed to state, interference.



For example, in cases where a defendant has acted to interfere with a victim's housing rights, the underlying right for conspiracy purposes is found in the civil statute of 42 U.S.C. § 1982.



The following cases illustrate some of the incidents covered by Section 241:

United States v. R.A.V., 22 F.3d 821 (8th Cir. 1994); *United States v. Gresser*, 935 F.2d 96, 99 (6th Cir. 1991). (cross burning cases -- § 241 to violate Fair Housing Act, 42 U.S.C. § 1982). But see *United States v. Lee*, 935 F.2d 952 (8th Cir. 1991). (upholding constitutionality of § 241, but imposing strict requirements on government's proof regarding intent).

How does a housing related violence case make it to federal court?

- Victim reports incident to local police
- Local police refer matter or request assistance from federal authorities (Federal Bureau of Investigation)
- F.B.I. investigation
- F.B.I. refers the case to United States Attorney's Office for prosecution



How does a housing related violence case make it to federal court?

- **United States Attorney** decides whether to
 - Defer to State Prosecutor,
 - Decline the matter based on insufficiency of the evidence, or
 - Seek indictment by a federal grand jury



