Using the Master's Tools: Fighting Persistent Police Misconduct with Civil RICO

Steven P. Ragland

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Keywords
RICO, civil Rico, Guerrero v. Gates, law enforcement, Police misconduct, Section 1983

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USING THE MASTER’S TOOLS: FIGHTING PERSISTENT POLICE MISCONDUCT WITH CIVIL RICO

STEVEN P. RAGLAND

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1. See Audre Lorde, The Master’s Tools Will Never Dismantle the Master’s House, in SISTER OUTSIDER: ESSAYS AND SPEECHES 110-13 (1984) (providing the origin of the phrase “using the master’s tools”). This phrase refers to a continuing debate in the feminist movement as to whether to work within the establishment or wholly outside of it to achieve fundamental change and reform. This Comment will argue that RICO, a tool designed to strengthen law enforcement, should be employed against law enforcement officials and departments to punish misconduct and achieve substantive reform.
INTRODUCTION

The image captivated the world: more than a dozen Los Angeles Police Department (LAPD) officers surrounding and beating African-American motorist Rodney King. Following an automobile pursuit, police first shocked King with a 50,000-volt stun gun and then repeatedly struck him with nightsticks and kicked him about his head and body. At the end of the beating, King’s skull was fractured in eleven places, his ankle was broken, and he suffered internal injuries, a burn on his chest, and even brain damage. Reportedly, King pleaded for officers to stop while they continued assaulting him and laughing. A bystander captured the scene on videotape and it was broadcast worldwide. Charges were brought against four of the officers who beat King. Even though all but one was acquitted on criminal charges, many believed police misconduct rampant...
pervaded the Los Angeles force.9

The acquittal of the officers heightened widespread resentment and distrust of law enforcement in minority neighborhoods,10 sparking deadly riots that left much of Los Angeles in ruin.11 The criminal acquittal and its aftermath raised doubts not just about the LAPD,12 but also about the ability of courts to punish errant officers.13 These events prompted an official probe of the LAPD, with former Secretary of State Warren Christopher chairing the investigative commission.14 The “Christopher Commission,”15 as it became known, scrutinized the LAPD’s training programs, recruitment efforts, internal affairs, and citizen complaint mechanisms.16 Ultimately, it found systemic problems within the department.17

(1994 & Supp. 2000). On appeal, the minimal thirty month sentence each defendant received was vacated. The U.S. Court of Appeals for the Ninth Circuit held that the District Court improperly reduced the sentences and remanded the case for resentencing. See United States v. Koon, 45 F.3d 1303 (9th Cir. 1995) (reversing and remanding to the District Court for improperly reducing Powell’s and Koon’s sentences). Ultimately, the Supreme Court affirmed in part and reversed in part, holding that the Ninth Circuit used the wrong standard of review and that the District Court’s actions were partly improper. See Koon v. United States, 518 U.S. 81 (1996) (reporting the Supreme Court’s decision).

9. See WARREN CHRISTOPHER ET AL., REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 32 (1991) [hereinafter CHRISTOPHER COMMISSION REPORT] (reporting findings of an inquiry commission, headed by former Secretary of State Warren Christopher, investigating police misconduct within the LAPD). The Christopher Commission Report also revealed a culture that accepted excessive use of force. A police dispatcher who sent an ambulance to the scene of the King beating said “he pissed us off, so I guess he needs an ambulance now . . . should know better than run, they are going to pay a price when they do that.” HUMAN RIGHTS WATCH, supra note 2, at 200-01.

10. See id. at 201 (detailing the creation of the Christopher Commission).

11. See id. at 201 (detailing the creation of the Christopher Commission).
Well before the King beating, the LAPD was aware of misconduct by the officers involved in the King beating, and failed to adequately address the issue. For example, Los Angeles paid $70,000 in a civil settlement for injuries delivered by Officer Laurence Powell, one of the officers involved in the King beating, yet he remained on the force. Powell was not the only officer involved in the King beating who had a similar history of civilian complaints and, likewise, avoided dismissal.

A. Rampart Misconduct

A second scandal erupted in 1999, this time involving officers in the Rampart CRASH unit. The “Rampart scandal” began with the conviction of Rafael Perez, an undercover Rampart division officer, on charges stemming from theft of illegal narcotics from police evidence storage. As part of a plea agreement, Perez cooperated with authorities, providing details of systemic misconduct within Rampart’s elite anti-gang CRASH unit. According to sworn statements, Rampart officers regularly planted evidence, framed suspects, committed perjury in court, and beat innocent civilians for sport. In one incident, Rampart officers apparently framed and shot nineteen-year-old Javier Francisco Ovando. Although released from jail after Perez revealed the frame-up, Ovando spent two years in

misconduct in the department “is fundamentally a problem of supervision, management and leadership”).

18. See HUMAN RIGHTS WATCH, supra note 2, at 200 (noting that three of the four officers indicted for the King beating had a history of citizen complaints for excessive force).
19. See id. at 200 n.5 (discussing circumstances behind a prior civil judgment against Officer Powell) (citing LOU CANNON, OFFICIAL NEGLIGENCE (1997)).
20. See Jarring, supra note 8 (reporting that Officer Powell was a criminal defendant in the King beating trial).
21. See id. (reporting that Officer Theodore Briseno kicked and struck a handcuffed suspect in 1987, resulting in a sixty day suspension).
22. CRASH is the anti-gang unit of Los Angeles’ Rampart division police department. The acronym stands for Community Resources Against Street Hoodlums. See Cathy Booth, L.A.’s Bandits in Blue: A shocked city investigates charges that its cops have lied, stolen and shot suspects for sport, TIME, Feb. 28, 2000, at 48 (reporting on the Rampart scandal).
24. See Cohen, supra note 8, at 31-33 (detailing allegations inculpating dozens of officers).
25. See id. (reporting alleged misconduct of Rampart officers).
prison, is paralyzed from the shooting, and may now face deportation proceedings.\footnote{27} Based on this scandal, and revelations such as those in the Ovando case, almost one hundred convictions have been overturned\footnote{28} and the Los Angeles Public Defender has plans to review an additional 30,000 convictions over the next several years to identify cases tainted by Rampart.\footnote{29}

The King and Rampart CRASH scandals\footnote{30} heightened fears that the LAPD’s misconduct remained unabated and underscored the inability of traditional legal efforts to force change.\footnote{31} Apparent confirmation that the LAPD is unable, or unwilling, to police itself came in September 2000, when the city of Los Angeles entered into a consent decree with the U.S. Department of Justice.\footnote{32} The decree forestalled a lawsuit by the federal government over the pattern and practice of police misconduct that even Los Angeles officials acknowledge.\footnote{33} While the consent decree imposes some reforms,\footnote{34} critics remain skeptical that it will solve the department’s problems.\footnote{35}

In addition to criminal probes, the Los Angeles city attorney expects hundreds of Angelenos to file federal civil suits, alleging abuse at the hands of Rampart officers.\footnote{36} Some believe this fury of

\begin{itemize}
\item \footnote{27} See id. (reporting the details of Ovando’s incarceration and release).
\item \footnote{28} See Robinson, supra note 23 (reporting on the fallout of the scandal).
\item \footnote{29} See id. (detailing the Los Angeles Public Defender’s reaction to the Rampart scandal).
\item \footnote{30} See Cohen, supra note 8, at 30 (discussing the allegations, including claims that Rampart officers "frame[d] the innocent . . . smack[ed] around citizens on the street for kicks . . . and perjure[d] themselves to get convictions").
\item \footnote{31} See infra notes 234-261 and accompanying text (discussing the inability of civil recovery as a factor in the continuation of police misconduct).
\item \footnote{33} See Booth, supra note 32 (reporting comment by Bill Lan Lee, then-director of the Justice Department’s Civil Rights Division, that “Police reform has been an unfinished item on the Los Angeles agenda for almost a decade.”).
\item \footnote{34} See Booth, supra note 32 (reporting that the reforms include: a computerized database to monitor civilian complaints against officers; a data collection to answer charges of racial profiling by LAPD officers; and the establishment of a special unit to immediately investigate police shootings and other “serious use of force incidents”).
\item \footnote{35} See id. (quoting Los Angeles civil rights attorney Stephen Yagman, who represents Louie Guerreiro and approximately 100 other clients bringing suit against the LAPD, stating that “[a]ny consent decree will be illusory and meaningless”). Yagman cites the LAPD’s “authoritarian and outsider-adverse culture” as cause for continued resistance to reform. Id.
\item \footnote{36} See id. (covering the expected consequences of the Rampart scandal for the city of Los Angeles).}

\end{itemize}
civil litigation and the re-opening of criminal cases may effectively root out corruption and restore hope. However, given the startling allegations of massive LAPD misconduct and the failure of past civil litigation to halt abuse, new approaches are needed.

Civil suits against the LAPD, and police forces in general, are not uncommon. Rodney King, for example, won a multi-million dollar judgment against two of the officers who beat him. However, with the potential reversal of hundreds of convictions due to the Rampart scandal, Los Angeles now stares down the barrel of enormous civil liability and may have to dip into funds from the 1998 tobacco settlement to ante up.

The likely basis of most of these expected civil actions will be 42 U.S.C. § 1983, the most common cause of action in suits against police. However, at least one pending case—Guerrero v. Gates—is moving forward not just under § 1983 but also under the civil arm of the Racketeer Influenced and Corrupt Organizations Act (“civil RICO”), a novel and potentially groundbreaking new

37. See id. (reporting Los Angeles Assistant Public Defender Robert Kalunian’s comments that the goal of the litigation and conviction reviews are to provide justice for the wrongly convicted and “to restore the public’s faith in the department”). According to Kalunian, recently imposed limits on motions to suppress evidence helped pave the way for the scandal in that the limits resulted in presentation of evidence to the jury that was allegedly planted by the officers involved. Id.

38. See supra notes 23-36 and accompanying text (discussing the extent of the problems in the LAPD).

39. See supra notes 17-32 and accompanying text (describing persistent lack of reform within the LAPD).

40. See HUMAN RIGHTS WATCH, supra note 2, at 201-02 (citing the Christopher Commission Report noting that eighty-three civil damages cases stemming from excessive force allegations were settled by the city in just five years).

41. See Millionaire of the Week, TIME, May 2, 1994, at 13 (reporting a jury award of $3,816,535.45 in Rodney King’s civil suit against LAPD officers).

42. See Booth, supra note 32, at 48 (reporting that over 4,000 cases are under review as a result of the Rampart scandal).


44. See Booth, supra note 32 (projecting up to $400 million in liability for Los Angeles stemming from police misconduct suits and noting Mayor Richard Riordan’s call for using funds from the tobacco settlement to pay the fines).


theory for such cases.  

B. Guerrero v. Gates Breaks New Ground

Louie Guerrero filed suit against officers from the Rampart division of the LAPD in U.S. District Court for the Central District of California. He alleges Rampart CRASH Unit officers planted drugs on him, used excessive force, filed false charges, and caused his unlawful imprisonment. He pleaded constitutional violations pursuant to § 1983, among other causes of action. In itself, the § 1983 count, although based on the most massive police misconduct scandal in the city’s history, is not particularly novel from a legal perspective. However, Guerrero’s pleadings also include a civil RICO cause of action. As noted University of Southern California law professor Erwin Chemerinsky commented, this new approach to police misconduct litigation greatly increases the city’s potential liability.


48. See Booth, supra note 32 (calling the decision that Guerrero can sue the LAPD as a criminal enterprise, pursuant to civil RICO, “an unprecedented decision against a law enforcement agency”); Rene Sanchez, L.A. Police Misconduct Likened to Racketeering; Judge’s Order Could Widen City’s Liability, WASH. POST, Aug. 31, 2000, at A4 (calling judge Rea’s decision in Guerrero, allowing the suit to proceed under a civil RICO theory, “unprecedented”); see also id. (reporting comments by noted law professor Erwin Chemerinsky that the civil RICO cause of action in Guerrero is “a novel theory”). While prosecutors do bring criminal RICO prosecutions against corrupt officers, see infra notes 204-208 and accompanying text, no civil plaintiff has thus far used RICO to win compensation for alleged police misconduct.

49. See Plaintiff’s Opposition to Defendant Bernard Parks’ Motion to Dismiss at 1, Guerrero v. Gates, 110 F. Supp. 2d 1287 (C.D. Cal. 2000) (No. 00-7165) [hereinafter Plaintiff’s Opposition] (providing case number and forum information).

50. See id. at 1-2 (stating allegations of misconduct); see also Guerrero, 110 F. Supp. 2d at 1291-92 (same).

51. See Plaintiff’s Opposition, supra note 49, at 1-2 (alleging that officers unlawfully detained him, illegally searched him, planted narcotics on him, illegally arrested him, and as a result, that he was falsely charged with a narcotics offense and unlawfully incarcerated). Claims pursuant to § 1983 also include allegations of Fourth and Fourteenth Amendment violations stemming from officers’ use of excessive force in arresting him. Id. at 3.

52. See Booth, supra note 32 (stating the Rampart allegations create the “biggest police scandal ever” in Los Angeles).

53. See AVERY & RUDOVSKY, supra note 45, at 1-5 (noting the increased utilization of section 1983 to address police misconduct).

54. See Guerrero, 110 F. Supp. 2d at 1292 (discussing RICO claims generally).

55. See Sanchez, supra note 48 (quoting Professor Chemerinsky saying, “[i]t’s a novel theory, and it could tremendously expand the scope of the liability the city could be facing.”). This increased liability is due to civil RICO’s treble damages provision. See infra Part IV.C (discussing treble damages provision of civil RICO).
organized crime, its original targets. The use of civil RICO to battle the sort of persistent police misconduct evident in Los Angeles follows logically from this continued expansion of the Act, even if such use was never intended by the authors of the legislation.

This Comment argues that allowing a civil RICO cause of action for plaintiffs such as Guerrero is appropriate and justified, especially when courts have allowed suits to proceed under RICO theories that are even more attenuated from original legislative intent. For the purposes of this Comment, “police misconduct” refers to pervasive patterns of behavior such as those evident in Los Angeles.

To understand how a law created to augment the government’s enforcement arsenal can justifiably be turned against those it was intended to protect, the reader will note that this Comment refers repeatedly to civil RICO, criminal RICO, and RICO generally. Both the civil and criminal arms of RICO share substantive definitions and prohibit the same activities. Further, criminal RICO case precedents apply to civil RICO jurisprudence, and vice-versa. See infra notes 172-184 and accompanying text. To avoid confusion, I have specified the arm of RICO to which I refer whenever possible. If neither criminal nor civil is specified, the analysis applies generally to both branches of the Act.

In making this argument, this Comment anticipates the courts may place prudential limits on civil RICO as it extends into the police misconduct arena. Given the cabining of section 1983 doctrine, See infra notes 220-259 and accompanying text, many judges seem reluctant to allow broad leeway to plaintiffs in civil suits against government entities and/or employees. See generally id. (regarding the expansion of civil RICO since the RICO statute was enacted in 1970). This expansion is not without controversy and division in the circuits, however. See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 251 (1989) (Scalia, J., concurring) (commenting that the RICO statute has created “the widest and most persistent circuit split on an issue of federal law in recent memory.”).

In this Comment, I rely on the legislative history of RICO to establish the primary purpose of the statute. See infra notes 185-205 and accompanying text (discussing expansion of RICO). The reader will note that this Comment refers repeatedly to expansive interpretations of RICO, to criminal RICO, and to RICO generally. Both the civil and criminal arms of RICO share substantive definitions and prohibit the same activities. Further, criminal RICO case precedents apply to civil RICO jurisprudence, and vice-versa. See infra notes 172-184 and accompanying text. To avoid confusion, I have specified the arm of RICO to which I refer whenever possible. If neither criminal nor civil is specified, the analysis applies generally to both branches of the Act.

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meant to serve (law enforcement), Part I closely examines civil RICO. The statute’s origins and purpose are first discussed, followed by an assessment of the elements of a RICO claim.

Part II examines how RICO’s reach now extends well beyond targeting organized crime, with the Act commonly used in criminal prosecutions outside the organized crime context, including cases brought against police officers. Part II also discusses why plaintiffs should follow the lead of prosecutors and employ civil RICO in suits based on police misconduct.

Part III examines the failure of constitutional torts to eliminate police misconduct. Specific burdens imposed upon the § 1983 plaintiff are discussed, as are other insufficiencies of § 1983, the most common means to redress police misconduct. Next, Part IV discusses the hope that civil RICO provides to victims of police misconduct and examines issues of requisite intent, statute of limitations, and damage awards in civil RICO.

Part V considers a potential drawback of this use of civil RICO. It examines reasons for limiting municipal liability under civil RICO in accord with the curbs on liability that exist in the § 1983 context.

Finally, the Comment concludes that victims of police misconduct should aggressively pursue civil RICO and develop a jurisprudence that may promote true reform of troubled police forces. This Comment argues that civil RICO can provide a useful tool in the fight against police misconduct, carrying the potential to achieve substantive reform where other remedies have failed.

I. CIVIL RICO

This section examines Guerrero’s novel legal theory and its potential for success. To understand the applicability of RICO to police misconduct, the Act’s origin and purpose is scrutinized. The section will conclude by examining potentially problematic RICO elements and explaining how they can be met in the Guerrero context.


65. See AVERY & RUDOVSKY, supra note 45 (observing that most civil suits alleging police misconduct are federal suits pursuant to § 1983).
A. RICO’s Origin and Purpose

Prompted by the insufficiency of existing law enforcement tools to fight organized crime,66 the Racketeer Influenced and Corrupt Organizations Act (“RICO”) was signed into law by President Richard M. Nixon in 1970.67 Congress clearly asserted that the goal of RICO was to empower law enforcement in the fight against organized crime with more powerful legal tools and to provide new remedies for injured parties.68 Concerned that organized crime corrupts legitimate enterprises and “democratic processes,”69 Congress enacted an extremely broad statute.70 Additionally, Congress specifically called for liberal construction of the Act.71 RICO, therefore, seeks to protect legitimate businesses and enterprises from corruption by organized crime.72

The conduct of Officer Powell and Sergeant Koon73 arguably corrupted the LAPD by causing the public to lose faith in and even resent the force.74 Likewise, the acts of Perez and other Rampart

66. See Blakey, supra note 56, at 249-53 (discussing “the origins of the ideas in RICO”).
68. See Organized Crime, supra note 56, at 923:
   It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.”). Congress further explained, “organized crime derives a major portion of its power through money obtained from . . . gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation . . . .
   Id. at 922-23.
69. See id. at 923 (expressing concern over the corrupting effect of organized crime on legitimate businesses).
71. See Organized Crime, supra note 56, at 947 (stating that RICO “shall be liberally construed to effectuate its remedial purposes”).
73. See Prud’Homme, supra note 3 (providing details of the King beating); see also United States v. Koon, 833 F. Supp. 769, 774-80 (C.D. Cal. 1993) (subsequent history omitted) (providing findings of fact in trial of Koon and Powell for federal civil rights violations).
74. See Jarring, supra note 8 (discussing the explosion of rage after the criminal acquittal of officers involved in the King beating).
officers infiltrated the otherwise legitimate LAPD.\textsuperscript{75} Given RICO’s purpose of protecting legitimate enterprises from criminal corruption,\textsuperscript{76} the LAPD officers’ behavior is an appropriate RICO target.\textsuperscript{77}

\textbf{B. The Elements: Meeting the Threshold}

Regardless of how broadly the courts may interpret civil RICO, plaintiffs must, of course, meet specific elements to proceed under RICO.\textsuperscript{78} Generally, a plaintiff must demonstrate an injury in her business or property as a result of racketeering activities as defined in the Act.\textsuperscript{79} A person violates § 1962 of the RICO statute when she

75. See Cohen, supra note 8 (reporting the revelations of misconduct in the Rampart division).

76. See supra note 72 and accompanying text (establishing RICO’s purpose of protecting legitimate organizations from criminal corruption).

77. Note that a civil RICO action in the King case likely cannot prevail, as assault and battery, and even section 1983 violations of constitutional rights, do not in themselves constitute “racketeering activity” as defined in section 1961(1) of the RICO act. See 18 U.S.C. § 1961(1) (1994 & Supp. 2000) (defining racketeering activity); see also Part I.B. If the officers obstructed justice or obstructed the criminal investigation into the incident, such acts might provide a basis for a civil RICO action, if all other elements of a RICO violation are present. See 18 U.S.C. § 1961(1)(B) (1994 & Supp. 2000) (stating that obstruction of justice and obstruction of criminal investigations can constitute racketeering activity); see also infra Part I.B (discussing RICO elements and applying them to the police misconduct context). The King case is used in this Comment, however, as an illustration of the impact that high-profile police brutality cases have on the nation and on the departments that employ errant officers.

78. See Guerrero v. Gates, 110 F. Supp. 2d 1287, 1292 (C.D. Cal. 2000) (stating that “[a] violation of § 1962(b) requires: (1) acquisition or maintenance of (2) an interest in or control of (3) any enterprise (3) [sic] through a pattern (4) of racketeering activity”) (citing Medallion TV Enters., Inc. v. SelectTV of Cal., Inc., 627 F. Supp. 1290, 1292 (C.D. Cal. 1986)); Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000) (stating, “[a] violation under [18 U.S.C.] section 1962(c) requires proof of: 1) conduct 2) of an enterprise 3) through a pattern 4) of racketeering activity”) (citing Selima S.P.R.L. v. Imrex Corp., 473 U.S. 479, 496 (1985)), cert. denied, 551 U.S. 828 (2000); Howard, 208 F.3d at 751 (stating that “[t]o establish a violation of section 1962(d), plaintiffs must allege either an agreement that is a substantive violation of RICO or that defendants agreed to commit, or participated in, a violation of two predicate offenses”) (citation omitted).


As used in this chapter [18 USCS §§ 1961 et seq.]—

(1) “racketeering activity” means

(a) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the
Controlled Substances Act [21 USCS § 802]), which is chargeable under State law and punishable by imprisonment for more than one year;
(b) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic).
(c) an act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds),
(d) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]), punishable under any law of the United States, any act which is indictable under the Currency and Foreign Transactions Reporting Act, or
(e) any act which is indictable under the Immigration and Nationality Act,
engages in a racketeering pattern\textsuperscript{82} connected to creating, controlling, or acquiring an enterprise used for racketeering.\textsuperscript{85} As RICO is a novel theory for police misconduct cases,\textsuperscript{84} this Comment next discusses the requirements for RICO injury, defines RICO pattern, discusses the applicability of RICO enterprise to the police misconduct context, and explains how police misconduct affects interstate commerce. It is important to note that while the civil and

section 274 [8 USCS § 1324] (relating to bringing in and harboring certain aliens), section 277 [8 USCS § 1327] (relating to aiding or assisting certain aliens to enter the United States), or section 278 [8 USCS § 1328] (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain . . .

\textit{Id.} See also 18 U.S.C. § 1962 (1994) (listing prohibited activities). Section 1962 provides:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

(c) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.


82. See \textit{H.J.}, Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 232-33 (1989) (explaining RICO pattern element); Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2d 241, 242 (5th Cir. 1988) (stating “(1) a \textit{person} who engages in (2) a \textit{pattern of racketeering activity} (3) connected to the acquisition, establishment, conduct, or control of an \textit{enterprise}” violates RICO) (emphasis in original); see also Naranjo & Pina, \textit{supra} note 56, at 28-29 (discussing the statutory elements of civil RICO).

83. See \textit{H.J.}, Inc., 492 U.S. at 233 (explaining the requirement of using or investing racketeering income “to acquire an interest in or to operate an enterprise engaged in interstate commerce”); Delta Truck, 855 F.2d at 243-44 (discussing the requisite nexus between allegedly illegal activity and RICO enterprise).

84. See sources cited \textit{supra} note 48.
criminal arms of RICO share much, a defendant need not be convicted under criminal RICO to face a § 1964 suit.

1. Cognizable injury

Civil RICO entitles a plaintiff to damages only from an injury to "business or property." An injury to business or property is distinct from personal injuries, for which RICO provides no relief. Caselaw demonstrates, however, that pecuniary loss resulting from personal injuries caused by racketeering may constitute "self-evident injury" in a RICO case. Therefore, when personal injuries lead to, for example, loss of income due to missed work, courts are willing to allow a RICO theory to proceed. In such a case, the plaintiff's injury is his pecuniary loss resulting from injury and inability to work and not his actual physical injury.

Given these precedents and the Supreme Court's statement that RICO is to be liberally construed, a victim of police misconduct appears to be in a strong position to claim cognizable injury under RICO. However, the plaintiff must specify that the claim is for pecuniary losses associated with personal injuries and not for personal injuries themselves.

88. See Grogan v. Platt, 835 F.2d 844, 846-47 (11th Cir.), rev'd denied en banc, 851 F.2d 1423 (11th Cir.) (holding that "the phrase 'injured in his business or property' excludes personal injuries" and that a civil RICO action is distinct from a wrongful death action).
89. Oscar v. Univ. Students Coop. Ass'n, 965 F.2d 783, 785 (9th Cir.) (holding "personal injuries are not compensable under RICO").
91. Accord Callan v. State Chem. Mfg. Co., 584 F. Supp. 619, 622 (E.D. Pa. 1984) (stating that civil RICO's language is clear and unambiguous and therefore it is inappropriate for the court to restrict its application beyond the plain meaning of the language Congress enacted); Kobylak, supra note 72, at 595 (discussing Callan and similar cases refusing to restrict RICO beyond the plain meaning of the language enacted).
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Faced with a motion to dismiss for want of cognizable injury, Guerrero successfully argued that his loss of employment due to injuries at the hands of Rampart officers constituted an injury to business and was, therefore, cognizable under civil RICO. Ruling in Guerrero’s favor, Judge Rea observed that pecuniary losses associated with personal injuries are compensable under civil RICO and cited agreement among numerous federal districts and circuits.

2. Pattern

Even given a cognizable injury, the plaintiff must also demonstrate that a “pattern of racketeering activity” exists. RICO § 1961(1)(A) specifies racketeering activity as “any act or threat involving murder, kidnapping . . . bribery, extortion . . . or dealing in a controlled substance” and § 1961(1)(B) includes obstruction of justice, obstruction of criminal investigations, tampering with or retaliating against a witness, victim, or informant on the list of racketeering activities.


94. See Plaintiff’s Opposition, supra note 49, at 5-6 (providing Guerrero’s argument), citing Hunt v. Weatherbee, 626 F. Supp. 1097, 1101 (D. Mass. 1986) (holding plaintiff’s sexual harassment and discrimination claim that “defendants’ actions forced her out of her job as a carpenter and disabled her from pursuing such work in the future” constituted a cognizable claim under civil RICO); Rodonich v. House Wreckers Union, Local 95, 627 F. Supp. 176, 180 (S.D.N.Y. 1985) (holding that lost income constitutes “sufficient proprietary damage” for civil RICO claim).

95. See Guerrero, 110 F. Supp. 2d at 1293 (stating that “pecuniary losses associated with personal injuries caused by racketeering” are cognizable injuries pursuant to civil RICO).


A pattern is established by first demonstrating a minimum of two racketeering acts in a ten-year period. Additionally, some common scheme, plan, or motive must connect the acts. A pattern cannot, therefore, merely be a series of disconnected acts. Furthermore, repetitive acts against a single victim within a small time frame do not establish a RICO pattern, as RICO demands an ongoing design. Such ongoing design requires the acts be sufficiently different but still related. Isolated improper acts are not enough to sustain a RICO claim. Generally, to establish a RICO pattern, the plaintiff must show a threat of continuing activity or a close period of repeated conduct, although the latter showing may invite greater scrutiny by the court.

Because the predicate acts of racketeering need not be overt, establishing a pattern is easier than it appears at first blush. A police officer’s forbearance from arresting drug dealers, when receiving drugs in return, can establish racketeering activity and the officer’s


105. See id. (stating requirement of interrelatedness of acts).

106. See Roeder v. Alpha Indus., Inc., 814 F.2d 22, 30 (1st Cir. 1987) (explaining that predicate acts must “threaten to be more than an isolated occurrence”).

107. See Pitts v. Turner & Boisseau, Chartered, 850 F.2d 650, 652 (10th Cir. 1988) (holding threat of continuing activity is required for RICO pattern, and that scheme towards one single objective is insufficient even if it involves multiple acts, because the scheme ends when the actor accomplishes its underlying purpose); see also Sedima S.P.R.L. v. Imrex Corp., 473 U.S. 479, 496 n.14 (1985) (commenting that RICO’s legislative history dictates that the Act was not meant for the “isolated offender” or “sporadic activity”).


109. See Western, 235 F.3d at 634-36 (explaining RICO pattern precedent).

110. See United States v. Ruiz, 905 F.2d 499, 503-04 (1st Cir. 1990) (affirming criminal RICO conviction of officer for refusing to enforce the law).
refusal to arrest the dealers can form the requisite pattern. 111

In the Guerrero case, establishing a pattern based on police misconduct is indeed possible. 112 Officers within the Rampart division of the LAPD, for example, have allegedly committed hundreds of criminal acts over the last decade. 115 These alleged acts, such as planting incriminating evidence on citizens, 114 filing false police reports, 115 false arrest of citizens, 116 and stealing drugs from police evidence lockers, 117 appear part of a common scheme.

By demonstrating pursuant to § 1962 118 that Rampart officers received income (e.g., their salary) directly or indirectly from participating in such a racketeering pattern, Guerrero can meet this threshold element. As similar allegations of pervasive misconduct have been directed at other major metropolitan forces, 119 maintainable actions may exist in many areas of the country. Considering the Rampart scandal encompasses nearly a decade of alleged misconduct, 120 there appears a serious threat of continuing activity. Additionally, even though RICO requires multiple acts and continuing activity, an action based on a single scheme is possible, 121 albeit difficult to maintain. 122 Proving a pattern of racketeering activity, however, does not in itself prove the existence of a RICO enterprise. 123

111. See id. (affirming criminal RICO conviction of police officer for furthering drug trafficking by not arresting drug dealers in exchange for receipt of drugs).
113. See Booth, supra note 32 (discussing allegations of abuse).
114. See id. (reporting alleged misconduct).
115. See id. (detailing allegations in Rampart scandal).
116. See Cohen, supra note 8 (reporting allegations that Rampart officers took citizens into custody under false pretenses).
117. See supra note 25 (reporting Perez’s theft of drugs from evidence storage).
120. See Cohen, supra note 8 (reporting the scope of the Rampart scandal).
121. See Hill v. Equitable Bank, 655 F. Supp. 631, 652 (D. Del. 1987) (holding where predicate acts within a single scheme are sufficiently different and ongoing, there can be a violation of RICO); Tri-Cont’l Leasing Corp. v. Cicerchia, 664 F. Supp. 635, 640 (D. Mass. 1987) (holding that continuity requirement of RICO pattern can be established by a single scheme); Bush Dev. Corp. v. Harbor Place Assoc., 632 F. Supp. 1359, 1366 (E.D. Va. 1986) (holding that even though there was only one scheme to defraud, alleged acts of mail fraud satisfied “pattern” element of RICO).
122. See Edmondson & Gallagher v. Alban Towers Tenants Ass’n, 48 F.3d 1260, 1265 (D.C. Cir. 1995) (commenting that existence of “single scheme, single injury, and few victims . . . makes it virtually impossible for plaintiffs to state a RICO claim”).
123. See United States v. Williams, 809 F.2d 1072, 1094 (5th Cir. 1987) (holding that pattern does not necessarily prove existence of an enterprise).
3. Enterprise

RICO defines enterprise very broadly, including legal entities and informal associations. Labor unions, corporations, and even individuals can fit the definition. The definition remains silent on the applicability to state and local entities. While the Supreme Court has not specifically addressed this definitional issue, nearly all lower federal courts agree that state and local entities can constitute enterprises under RICO.

In United States v. Freeman, the U.S. Court of Appeals for the Ninth Circuit explicitly followed the seven federal circuits that previously held government entities can satisfy the enterprise element of RICO. Further, the court emphasized the enterprise need not benefit economically from the racketeering activity, as long as pecuniary gain motivated the predicate acts. Criminal RICO enterprises can include state and local police departments and

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125. See United States v. Provenzano, 688 F.2d 194, 199-200 (3d Cir. 1982) (finding labor union to be RICO enterprise).
126. See United States v. Weisman, 624 F.2d 1118, 1120 (2d Cir. 1980) (holding corporation an appropriate enterprise under RICO).
129. See id. (stating that the U.S. Supreme Court has not ruled on the issue).
130. See id. at 858 (citing agreement on the topic among the vast majority of federal circuits). In relatively early RICO jurisprudence, a court ruled the City of El Paso a RICO enterprise. See United States v. Sutherland, 656 F.2d 1181, 1198 (5th Cir. 1981) (holding “the term ‘enterprise’...is broad enough to include a municipal court which is one part of the city government”). But see United States v. Mandel, 415 F. Supp. 997, 1020-22 (D. Md. 1976) (stating state and local enterprises can constitute RICO enterprises), rev’d on other grounds, 591 F.2d 1347 (4th Cir. 1979), vacated on other grounds, 602 F.2d 653 (1979) (en banc), cert. denied, 445 U.S. 961 (1980).
131. 6 F.3d 586 (9th Cir. 1993).
132. See Freeman, 6 F.3d at 597 (noting its holding is in accordance with seven federal circuits).
133. See id. at 597 (holding the economic motive must come from either the enterprise or the predicate acts). The court cited various federal circuit cases holding the same, including: United States v. Ivic, 700 F.2d 51, 58-65 (2d Cir. 1983); United States v. Flynn, 852 F.2d 1045, 1052 (8th Cir. 1988).
134. Both the civil and criminal arms of RICO share definitions and are subject to similar interpretation by the courts. See Slattery v. Costello, 586 F. Supp. 162, 164 (D.D.C. 1983) (holding caselaw from criminal RICO applies to civil RICO).
135. See United States v. Davis, 707 F.2d 880, 882-83 (6th Cir. 1983) (county sheriff’s office RICO enterprise); United States v. Kovic, 684 F.2d 512, 516 (7th Cir.
local prosecutor offices.\textsuperscript{136}

One significant hurdle in meeting the RICO enterprise element is the operation-or-management test introduced in \textit{Bennett v. Berg}\textsuperscript{137} and elucidated in \textit{Reves v. Ernst & Young}.\textsuperscript{138} This test requires the defendant be associated with the racketeering enterprise and participate in the conduct of its affairs.\textsuperscript{139} The court in \textit{Reves} held the gross misconduct\textsuperscript{140} of an accountant who prepared fraudulent reports for a Farmer’s Cooperative did not pass the \textit{Bennett} operation-or-management test.\textsuperscript{141} Because the accountant had no role, direct or indirect, in conducting the Cooperative’s affairs, his misconduct remained outside the scope of RICO.\textsuperscript{142}

While the operation-or-management test may eliminate potential defendants who hold non-managerial positions within the target enterprise,\textsuperscript{143} the problem does not preclude a claim against officers within a police department. In \textit{United States v. Ruiz},\textsuperscript{144} the court held defendant police officer’s “illegal activities were clearly helped along by the authority vested in him as a police officer.”\textsuperscript{145} Further, the court commented that circumstantial evidence can establish the requisite nexus between the predicate racketeering acts and the enterprise.\textsuperscript{146} A police officer can, therefore, participate in the operation or management\textsuperscript{147} of the police department by using the police powers bestowed upon him by the department (i.e.,

\begin{itemize}
  \item \textsuperscript{136} See \textit{United States v. Goot}, 894 F.2d 231, 239 (7th Cir. 1990) (prosecutor’s office held RICO enterprise); United States v. Altomare, 625 F.2d 5, 7 (4th Cir. 1980) (same).
  \item \textsuperscript{137} 710 F.2d 1361 (8th Cir.).
  \item \textsuperscript{138} 507 U.S. 170 (1993).
  \item \textsuperscript{139} See id. at 183-85 (explaining and applying the operation-or-management test).
  \item \textsuperscript{140} The court referred to the accountant’s “reprehensible acts.” \textit{Arthur Young & Co. v. Reves}, 937 F.2d 1310, 1324 (8th Cir. 1991), \textit{aff’d sub nom.}, \textit{Reves v. Ernst & Young}, 507 U.S. 170 (1993).
  \item \textsuperscript{141} See \textit{Reves}, 507 U.S. at 185 (holding conduct not actionable under RICO).
  \item \textsuperscript{142} See id. at 186 (describing his conduct within the enterprise). \textit{Accord Ira Raphaelson & Michelle Bernard, \textit{RICO and the “Operation or Management” Test: The Potential Chilling Effect on Criminal Prosecutions}, 28 U. RICH. L. REV. 669, 686-89 (1994) (discussing the result in \textit{Reves} and generally addressing the operation-or-management test).}
  \item \textsuperscript{143} Because, like the accountant in \textit{Reves}, they lack the ability to effect the conduct of the enterprise.
  \item \textsuperscript{144} 905 F.2d 499 (1st Cir. 1990).
  \item \textsuperscript{145} Id. at 504.
  \item \textsuperscript{146} See \textit{Rez}, 905 F.2d at 504 (discussing requirements to establish nexus between predicate acts and enterprise).
  \item \textsuperscript{147} See \textit{Bennett v. Berg}, 710 F.2d 1361, 1364 (8th Cir. 1983) (stating that for a RICO violation to lie, the defendant must demonstrate “some participation in the operation or management of the enterprise itself”). \textit{See generally Raphaelson & Bernard, supra} note 142 (providing a detailed discussion of the operation-or-management test and recent applications of it).
\end{itemize}
While decided three years prior to *Reves*, 149 *Ruiz*’s logic establishing the nexus between the predicate acts and the enterprise remains untouched by the later U.S. Supreme Court decision in *Reves*. 150 Confirming this view, the U.S. Court of Appeals for the First Circuit recently examined *Reves* and commented that the case dealt only with necessary conduct for parties outside the alleged RICO enterprise. 151 The holding of *Reves*, therefore, is inapplicable to the police misconduct setting, when the defendant “person” is directly employed by the RICO enterprise. 152

However, while a government entity, such as the LAPD, can constitute a RICO enterprise, it cannot be a named defendant in a RICO suit as it cannot form the intent required for a RICO violation. 153 In fact, even illegal enterprises are inappropriate RICO defendants, as a civil plaintiff can sue only the person(s) and not the enterprise itself. 154 In *Guerrero*, the named plaintiffs include chiefs of police, members of the Board of Police Commissioners, city council...
members, members of the City Attorney's Office and more than 100 current or former members of the LAPD.

Finally, a plaintiff, or prosecutor, must establish a nexus between the predicate acts and a lawful RICO enterprise. Establishing the nexus requires three elements: (1) the defendant committed the predicate acts; (2) doing so was facilitated by his position within the enterprise; and (3) the enterprise felt the effect of the commission of said acts. The effect of the racketeering acts on the enterprise may be either direct or indirect, and the enterprise need not benefit from them. In United States v. Blackwood, a police officer's attempts to influence the outcome of traffic court cases sufficiently satisfied the nexus between acts and enterprise. With Blackwood's criminal conviction affirmed, the nexus requirement is not a barrier to RICO suits for police misconduct. Similarly, if the allegations in Guerrero prove accurate, Rampart officers: (1) committed acts that fall within the definition of RICO predicate acts; (2) those acts were facilitated by the officers' position in the LAPD as police officers and as members of the elite Rampart CRASH unit; and (3) the acts damaged the reputation and effectiveness of the LAPD by exposing its officers to civil liability and eroding public trust in the force.

4. Affecting interstate commerce

Finally, to show a RICO violation, the plaintiff must prove that the enterprise engaged in or affected interstate commerce. Minimal acts of interstate commerce satisfy this requirement. Sufficient acts

155. See Plaintiff's Opposition, supra note 49, at 1-5 (naming defendants).
156. See id. at 2-5. Of course, suing governmental officials raises qualified immunity issues, which are neither lessened nor exacerbated by RICO. See Chappell v. Robbins, 73 F.3d 918, 919 (9th Cir. 1996) (holding that in passing RICO, Congress did not intend to abrogate legislators' immunity).
157. See United States v. Cauble, 706 F.2d 1322, 1332-33 (5th Cir. 1983) (modifying the then-existing formulation for establishing a nexus between predicate acts and RICO enterprise and establishing a new test for the nexus).
158. See Cauble, 706 F.2d at 1333 (explaining the new test).
159. See id. at 1333 n.24 (stating either direct or indirect effect on the enterprise is enough).
160. See United States v. Webster, 669 F.2d 185, 187 (4th Cir. 1982) (explaining proof that RICO enterprise benefited from the acts or that they "advanced the affairs of" the enterprise is not required); see also Cauble, 706 F.2d at 1333 n.24 (same, citing Webster).
162. See Blackwood, 768 F.2d at 131 (holding nexus satisfied).
163. See id. at 139 (stating conviction is affirmed).
164. See 18 U.S.C. § 1962(a) (1994 & Supp. 2000) (stating the enterprise must be "engaged in" interstate or foreign commerce or its activities must "affect" the same). The same language is repeated in § 1962(b) and (c).
165. See United States v. Bagnariol, 665 F.2d 877, 892 (9th Cir. 1981) (holding
include travel out of the enterprise’s home state,\textsuperscript{166} purchasing equipment manufactured in another state,\textsuperscript{167} and placing or receiving interstate telephone calls.\textsuperscript{168} As one commentator observed, “courts have engaged in little more than sheer conjecture to determine that the [interstate commerce] element is present.”\textsuperscript{169}

In Guerrero, defendants’ motion to dismiss did not even raise a challenge based on RICO’s “affecting interstate commerce” requirement.\textsuperscript{170} Police departments most certainly perform the minimal acts held to satisfy this element.\textsuperscript{171} A suit for police misconduct, therefore, is unlikely discouraged by the “affecting interstate commerce” requirement.

\section*{II. Honing the Tool}

Understanding the applicability of RICO to police misconduct requires an examination of the scope of both the criminal and civil arms of the statute. This section examines the breadth of criminal RICO and demonstrates how victims of police misconduct can fashion a new civil remedy from existing RICO caselaw. As courts give prosecutors broad leeway to cast the RICO net far and wide, this section argues that consistency demands that plaintiffs be afforded

\textsuperscript{166} See United States v. Mannino, 635 F.2d 110, 118 (2d Cir. 1980); United States v. Mazzio, 501 F. Supp. 340, 342 (E.D. Pa. 1980); see also Patton, supra note 165, at 413 n.198 (citing these cases).

\textsuperscript{167} See United States v. Allen, 656 F.2d 964 (4th Cir. 1981) (holding interstate commerce requirement satisfied by purchase of goods manufactured out of state); United States v. Altomare, 625 F.2d 5, 8 (4th Cir. 1980) (holding phone calls made from one state to another as interstate commerce).

\textsuperscript{168} See Altomare, 625 F.2d at 8 (finding out-of-state phone calls satisfy interstate commerce requirement).


\textsuperscript{170} See Defendant’s Motion to Dismiss First Amended Complaint for Failure to State a Claim for Relief at 6-7, Guerrero v. Gates, 110 F. Supp. 2d 1287 (C.D. Cal. 2000) (No. 00-7165) (stating bases for motion to dismiss for failure to state a RICO claim).

\textsuperscript{171} Accord supra notes 166-168 and accompanying text (discussing minimal acts required). For example, the LAPD’s purchase of a police cruiser manufactured out-of-state would seem to suffice, as would the department’s purchase of insurance coverage from a national carrier or even simply placing an out of state telephone call from the Rampart division headquarters.
the same opportunity.

By passing RICO (both criminal and civil), Congress intended both to redress wrongs wrought by racketeering activity and to eliminate such activity through sweeping new prohibitions, remedies, and sanctions. Indeed, the purpose of RICO was to provide not just "enhanced sanctions," but "new remedies" with which to fight organized crime. As discussed below, RICO has expanded beyond targeting only organized crime.

While perhaps most people think of criminal sanctions in the RICO context, the earliest inceptions of the law envisioned civil remedies. Civil RICO creates elements that have no common law counterparts. Coupled with section 1962, the general RICO prohibitions, civil RICO provides a powerful framework for plaintiffs. Provisions for nationwide service of process, recovery of treble damages, and attorney's fees, make civil RICO an attractive

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172. See Chappell v. Robbins, 73 F.3d 918, 919 (9th Cir. 1996) (commenting that Congress intended to create "a wide array of novel civil and criminal weapons" by enacting RICO).
174. Id.
175. See infra Part II.A (discussing the expansion of RICO beyond organized crime).
176. See Blakey, supra note 56, at 261 (discussing the legislative history of RICO).

The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

Id.
179. See Cullen v. Margiotta, 811 F.2d 698, 712-13 (2d Cir. 1987) (observing no common law counterparts exist for certain civil RICO elements).
182. Civil RICO provides, "[a]ny person injured . . . shall recover threefold the
statute for the plaintiff’s attorney.\textsuperscript{184}

A. Not Just for Gangsters

RICO’s broad language is not unconstitutionally vague\textsuperscript{185} and courts liberally construe the statute,\textsuperscript{186} as Congress intended.\textsuperscript{187} This expansive construction allows RICO to reach well beyond the Cosa Nostra\textsuperscript{188} context.\textsuperscript{189} Indeed, legislators never intended RICO to apply solely to organized crime in the traditional sense of the term.\textsuperscript{190} As a result of this broad interpretation, criminal RICO is used not just against mafia\textsuperscript{191} but also against all manner of illegal activity, including white-collar crime,\textsuperscript{192} government corruption,\textsuperscript{193} and
prostitution rings. The number of predicate offenses has expanded since 1970, and the list is indeed extensive.

As with criminal RICO’s expansion beyond organized crime, civil RICO has enlarged in scope and reach. This expansion was not without its critics and the Supreme Court’s willingness to expand RICO in the civil context does not match its enthusiasm to do so in the criminal sphere. Nevertheless, it has been successful, with


194. See United States v. Tunnell, 667 F.2d 1182 (5th Cir. 1982) (discussing motel operators targeted for involvement in bribery of law enforcement to facilitate prostitution business operating on premises).

195. See Naranjo & Pina, supra note 56, at 26 (providing a legislative history of RICO).

196. See 18 U.S.C. § 1961(1) (1994 & Supp. 2000) (providing definition of “racketeering activity,” which includes but is not limited to, murder, kidnapping, gambling, arson, bribery, bribery and extortion); see also supra notes 79-82 and accompanying text (providing overview of requirements for RICO violation).

197. See United States v. Blackwood, 768 F.2d 131, 137 (1985) (holding RICO applicable to enterprises that are legitimate as well as to enterprises that are illegitimate. Here, the enterprise was the county circuit court); see also A. Laxmidas Sawkar, From the Mafia to Milking Cows: State RICO Act Expansion, 41 ARIZ. L. REV. 1133, 1134 (1999) (noting RICO “has gone far beyond its original organized crime limitation”).


200. See Raphaelson & Bernard, supra note 142, at 669-70 (observing the Court has liberally interpreted RICO for criminal cases, but “generally restricted the scope of the Act” in the civil sphere); see also Russello v. United States, 464 U.S. 16 (1983) (applying a liberal interpretation of RICO in criminal case); United States v. Turkette, 452 U.S. 576 (1980) (using a broader reading of RICO); see supra note 189, at 229 (construing RICO elements more narrowly in civil case context).
courts allowing broad leeway.\textsuperscript{201} With the Supreme Court at times expanding\textsuperscript{202} and at times limiting\textsuperscript{203} civil RICO’s reach, however, tension regarding its proper scope remains. Despite this tension, civil RICO is both an appropriate and sustainable avenue to address a long-standing pattern of police corruption and misconduct.

B. Good for the Goose

Courts readily advance criminal RICO prosecutions for police misconduct,\textsuperscript{204} and law enforcement offices can certainly constitute RICO enterprises.\textsuperscript{205} Legitimate organizations generally may serve as RICO enterprises in criminal actions pursuant to RICO.\textsuperscript{206} Further, as demonstrated in \textit{Ruiz}, the entire enterprise (e.g., majority of officers at a site) need not be complicit in the racketeering activity to

\textsuperscript{201} See \textit{Sedima}, 473 U.S. at 499 (holding Congress intended to reach both legitimate and illegitimate businesses with RICO and approving of the use of RICO in “everyday fraud cases”); \textit{Turkette}, 452 U.S. at 586-87 (holding RICO reaches legitimate and illegitimate businesses). In fact, even when the target is one not expressly foreseen by Congress, RICO actions have succeeded. See \textit{Haroco, Inc. v. Am. Nat’l Bank & Trust Co. of Chicago}, 747 F.2d 384, 398 (1984) (“[The] fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.”). See generally Shah, supra note 199, at 341-42 (noting that with \textit{Sedima}, the Supreme Court eliminated court-imposed limitations on civil RICO, thus “broaden[ing] the scope”).

\textsuperscript{202} See \textit{Nat’l Org. for Women v. Scheidler}, 510 U.S. 249, 256-62 (1994) (holding that since RICO does not require an economic or profit-seeking non-economic racketeering offenses are sufficient to state a claim for civil RICO).

\textsuperscript{203} See \textit{Reves}, 507 U.S. at 177-79, 186 (holding that to be liable of an offense under 18 U.S.C. \$ 1962(c), one must “participate” in the operation or management of the racketeering enterprise); see also Raphaelson & Bernard, supra note 142, at 698-99 (arguing that the management or control test adopted in \textit{Reves} will limit criminal prosecution under RICO).

\textsuperscript{204} See \textit{United States v. Davis}, 707 F.2d 880, 883 (6th Cir. 1983) (holding a county sheriff’s office is an enterprise under criminal RICO, and that an action pursuant to the Act can be maintained); \textit{United States v. Ambrose}, 740 F.2d 305, 512 (7th Cir. 1984) (finding the Chicago Police Department an appropriate RICO enterprise); \textit{Blackwood}, 768 F.2d at 137-38 (holding criminal RICO provides basis for convicting a police officer who, among other misconduct, sought bribes in exchange for influencing criminal cases pending in traffic court); \textit{Ruiz}, 905 F.2d at 503-04 (affirming conviction of police officer pursuant to criminal RICO for furthering drug trafficking). But see \textit{State v. Nunez}, 981 P.2d 738, 743 (Idaho 1999) (holding thefts by an officer of drugs and money was not sufficient to support a RICO charge because they were not committed “in the course of” defendant’s duties).

\textsuperscript{205} See \textit{Ruiz}, 905 F.3d at 503 (observing that the Lawrence, Massachusetts, police department qualified as an “enterprise” under RICO, a fact to which the parties stipulated); \textit{Davis}, 707 F.2d at 882-83 (holding that a county sheriff’s office was a RICO “enterprise”); \textit{Blackwood}, 768 F.2d at 137-38 (holding county circuit court constitutes an enterprise under RICO).

\textsuperscript{206} See \textit{Turkette}, 452 U.S. at 580, 593 (noting that the plain language of 18 U.S.C. \$ 1962(c) could include both legitimate and illegitimate enterprises, and holding both legitimate and illegitimate organizations can constitute RICO enterprises); see also \textit{United States v. Thompson}, 685 F.2d 993, 994-95 (6th Cir. 1982) (holding that a state governor’s office constitutes a RICO “enterprise,” as well as any other governmental office).
maintain a prosecution. In *Ruiz*, the court found the police department an appropriate RICO enterprise and held that the pattern of racketeering activity required by the statute was established even though a single officer acted essentially alone, without complicity of the department as a whole. In the *Guerrero* civil suit, substantially more prevalent and severe misconduct appears than in the aforementioned criminal prosecutions against corrupt officers.

C. Good for the Gander

Precedent from criminal RICO and civil RICO cases do apply to each other because both the criminal and civil sections of the Act share substantive definitions of what constitutes a violation. Further, civil RICO not only compensates parties for personal injuries, but also transforms injured parties into prosecutors, and thereby bolsters government efforts to eliminate racketeering. As the consent decree in Los Angeles demonstrates, local authorities appear, at times, incapable of rooting out police corruption and abuse. In fact, Los Angeles is not an isolated case. The Department of Justice has successfully negotiated consent decree oversight with three other police forces, and continues to investigate apparent patterns of misconduct in several others.

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207. See *Ruiz*, 905 F.2d at 501-02 (describing the illegal acts of the defendant and several named accomplices).

208. See *id.* at 503-04 (explaining that despite the lack of complicity of others in the department, the defendant’s illegal acts "were inextricably intertwined with his authority and activities as an employee" of the said "enterprise"—the police department—and, therefore, the jury could reasonably "find a snug fit between defendant’s acts and the enterprise").

209. See *supra* notes 23-36 and accompanying text (discussing allegations of illegal conduct in the Rampart scandal).

210. See *Slattery v. Costello*, 586 F. Supp. 162, 164 (D.D.C. 1983) (holding that case law "generated through judicial construction" of criminal RICO applies to civil RICO); see also Raphaelson & Bernard, *supra* note 142, at 670 n.9 (noting that a court’s holding in a civil RICO case will apply to a criminal RICO case and vice versa).

211. See *Rotella v. Wood*, 528 U.S. 549, 557 (2000) (stating that Congress intended for RICO to not only compensate victims, but also to encourage suits by injured parties for the purpose of eliminating racketeering activity); *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 187 (1997) (noting a purpose of RICO is to encourage private plaintiffs to investigate potential infractions); *Agency Holding Corp. v. Malley-Duff & Assocs.*, 483 U.S. 143, 151 (1987) (stating RICO was passed by Congress to provide damages and fees to those economically injured by racketeering, and to create "private attorneys general" to address the infrequently litigated problem).

212. See *supra* notes 32-37 and accompanying text (discussing the persistence of problems within the LAPD).

213. See *Booth*, *supra* note 32 (reporting consent decrees have been negotiated with the New Jersey State Police and forces in Pittsburgh, Pennsylvania, and Steubenville, Ohio).

214. See Debra Livingston, *Police Reform and the Department of Justice: An Essay on
Civil RICO’s private plaintiff involvement is of special importance given the reluctance of prosecutors to charge police officers for misconduct. In addition to prosecutors’ general disinclination to file charges against police officers, some jurisdictions enact procedural roadblocks, further lessening the likelihood of indictments against police officers. Georgia law, for example, provides special rights to police officers accused of misconduct on the job. These privileges include right to counsel in grand jury proceedings and advanced notice of charges. The barriers to prosecution of police misconduct necessarily force injured parties seeking redress into the civil sphere.

Accountability, 2 BUFF. CRIM. L. REV. 815, 815-16 (1999) (reporting the Department of Justice is monitoring or investigating forces in: Orange County, Florida; New Orleans, Louisiana; East Point, Michigan; Buffalo, New York; New York, New York; Washington, D.C.; Charleston, West Virginia; and Columbus, Ohio); see also Booth, supra note 32 (reporting investigations into forces in Washington, D.C., New Orleans, La., and “five other municipalities”).

215. See HUMAN RIGHTS WATCH, supra note 2, at 85-86 (discussing prosecutorial reluctance to charge police officers and attributing it to, inter alia, the close working relationship typical between prosecutors and police, and the difficulty of proving the case); see also id. at 85 (discussing Human Rights Watch’s conclusion that police misconduct prosecutions are uncommon); JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 198 (1993) (citing comments of experts on police abuse that criminal law usually fails to enforce appropriate professional standards). Accord Steve Mills, U.S. Police Brutality Indictments Prove Rare, CHI. TRIB., Oct. 9, 1997, at N1 (reporting that during one year in Chicago, only twenty two charges were filed based on police misconduct, even though the Federal Bureau of Investigations formally investigated 2,619 alleged incidents of abuse).


217. See HUMAN RIGHTS WATCH, supra note 2, at 87 (describing special procedures afforded officers that create one barrier to prosecutions against police).


219. The statute provides:

Before an indictment against a peace officer charging the officer with a crime which is alleged to have occurred while he or she was in the performance of his or her duties is returned by a grand jury, the officer shall be notified of the contemplated action by the district attorney . . . and the officer shall be afforded the rights provided in Code Section 45-11-4 [providing right to counsel and other protections in grand jury proceedings].

. . . subsection (a) . . . shall apply to all prosecutions, whether for misdemeanors or felonies, and no such prosecution shall proceed either in state or superior court without a grand jury indictment.

Generations of legal commentators have sounded alarms over the ineffectiveness of civil remedies for police misconduct. The fact that successful civil suits against police officers were sparse six decades ago is not surprising. However, the persistence of misconduct, and the ineffectiveness of both criminal and civil law to stem the tide underscores the need for a new approach.

Section 1983 is the most common means to redress police misconduct. However, the remedies it provides and the difficulties of section 1983 litigation, make it insufficient to tackle the problem. Civil RICO, on the other hand, has many benefits over section 1983, and provides a means to overcome the common barriers faced by injured plaintiffs suing errant officers. This Part will briefly examine section 1983, explain its limitations, and detail the potential of civil RICO to provide remedies and reform where section 1983 has failed.

Section 1983’s pedigree dates back to 1871. Congress has

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221. See Hall, supra note 220 (stating that civil remedies for illegal arrests are rare, and discussing reasons why).

222. See Miller, supra note 216, at 149 (noting the “disturbing frequency” of incidents of police misconduct nationwide); see also id. at n.5 (detailing surveys reporting the prevalence of use of excessive force by police).

223. See Miller, supra note 216, at 152 (commenting that both civil and criminal law “have proven conspicuously ineffective at policing the police”).


225. See AVERY & RUDOVSKY, supra note 45, at § 3.7, 3-81 (observing that most civil suits alleging police misconduct are federal suits pursuant to § 1983); see also Miller, supra note 216, at 155 (same).

226. See infra notes 240-259 and accompanying text (discussing insufficiencies of section 1983 suits).

227. See infra notes 263-279 and accompanying text (discussing benefits of civil RICO).

228. Section 1983 grew out of the Ku Klux Klan Act of 1871. See Act of Apr. 20, 1871, ch. 22, § 1, 17 Stat. 13 (1871). The 1871 Act reads:

[A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of
subsequently both broadened\textsuperscript{229} and limited its scope.\textsuperscript{230} Despite many decades of use, however, the promise of section 1983 as a tool against police misconduct remains unfulfilled.\textsuperscript{231} While this is not a Comment about section 1983, \textit{per se},\textsuperscript{232} an examination of problems arising from section 1983 suits against police is necessary to understand the potential benefits of civil RICO.\textsuperscript{233}

Many difficulties with section 1983 suits result from cultural and systemic barriers for the plaintiff.\textsuperscript{234} Primary among these is the difficulty of finding an attorney to take the case,\textsuperscript{235} especially

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\textit{Id.}  

The language of section 1983 closely mirrors this earlier Act: 

\begin{quote}
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
\end{quote}

42 U.S.C. \textsection 1983 (1994 & Supp. IV 1998). \textsuperscript{229} See Act of Dec. 29, 1979, Pub. L. No. 96-170, 93 Stat. 1284 (amending section 1983 to permit such civil rights suits in the District of Columbia). \textsuperscript{230} See Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, \textsection 309(c), 110 Stat. 3847, 3853 (amending section 1983 to require a declaratory judgment before any injunctive relief against a judicial officer can be obtained). \textsuperscript{231} See Patton, supra note 220, at 807-08 (commenting that “even successful section 1983 suits do not seem to deter misconduct”); see also supra notes 206-208 and accompanying text (discussing the First Circuit’s findings in \textit{United States v. Ruiz}). \textsuperscript{232} For excellent discussions of section 1983, its elements, and its inherent problems, see Myriam E. Gilles, \textit{Breaking the Code of Silence: Rediscovering “Custom” in Section 1983 Municipal Liability}, 80 B.U. L. REV. 17 (2000); Patton, supra note 220. But see Adam S. Lurie, \textit{Ganging Up On Police Brutality: Municipal Liability for the Unconstitutional Actions of Multiple Police Officers Under 42 U.S.C. \textsection 1983}, 21 CARDOZO L. REV. 2087 (2000) (advancing for a slightly more optimistic examination of section 1983). \textsuperscript{233} This Comment also does not directly address criminal causes of action against abusive police officers. While prosecutions are rare, there is a dim light flickering. The recently enacted 42 U.S.C. \textsection 14141 gives new powers to the U.S. Department of Justice, including the force of consent decrees such as those imposed upon Los Angeles. However, the law is too new for any conclusions as to its impact. For a comprehensive discussion of \textsection 14141, see Miller, supra note 216. \textsuperscript{234} See Patton, supra note 220, at 755-96 (discussing three primary obstacles facing plaintiffs). \textsuperscript{235} See Gilles, supra note 232, at 20 (observing section 1983 “has ... failed to live up to its promise” of ending police misconduct); see also AVERY & RUDOVSKY, supra note 45, \textsection 4.5, at 4-9 (commenting that “unless the plaintiff has suffered substantial injuries” significant damages are unlikely), \textit{cited in} Patton, supra note 220, at 755
considering the lack of means for the typical victim of abuse. Further, juries are typically heavily biased in favor of the police, and the “code of silence” creates another substantial stumbling block for plaintiffs. Yet, societal attitudes and police culture are not the only barriers to section 1983 success.

A. Section 1983 Poses Significant Pleading Burdens

Liability of individual officers under section 1983 is also problematic, given the requirement that the officer knew, or should have known, he was violating a citizen’s constitutional rights. Further, the standard of measuring the egregiousness of the alleged acts differs according to constitutional basis of the claim.

If the misconduct allegedly violates the Fourteenth Amendment, it is not enough for the officers to display deliberate indifference to fundamental rights. Rather, only conduct that “shocks the conscience” is actionable in that instance. Section 1983 claims arising from other bases, such as the Eighth Amendment, may require a lesser burden for the plaintiff, such as deliberate indifference. However, this lower burden is perhaps in reality not

n.12.

236. See Irving Joyner, Litigating Police Misconduct Claims in North Carolina, 19 N.C. CENT. L.J. 113, 113 (1991) (stating people of color are more likely victims of police misconduct that whites); see also Patton, supra note 220, at 756 (observing that poor African-American or Latino men are the most common victims of police abuse).

237. See Littlejohn, supra note 220, at 426 (stating that jury bias is a primary factor in the difficulty of prevailing in police misconduct cases). As U.S. Court of Appeals for the Ninth Circuit, Judge Alex Kozinski observed, “by and large the courts are just normal people. They have a tendency to be skeptical of people who say they were abused by the police,” quoted in Darlene Ricker, Behind the Silence, 77 A.B.A. J., July, 1991, at 45, 48 (1991).

238. This term refers to the refusal of fellow officers to report abusive conduct of their colleagues. See generally CHRISTOPHER COMMISSION REPORT, supra note 9, at 168-71 (discussing the code of silence within the LAPD); Patton, supra note 220, at 763-64 (discussing the code of silence).

239. See Patton, supra note 220, at 763-64 (discussing the problems presented by the code of silence).

240. See generally Young v. Mt. Ranier, 2001 U.S. App. LEXIS 1328, at 7 (4th Cir. 2001) (discussing the standard that officers either actually be aware of facts, or be able to draw an inference, that a substantial risk of serious harm exists); Giarrusso v. Chicago, 539 F. Supp. 690, 693 (N.D. Ill. 1982) (discussing allegations that police officers “knew or should have known” conduct violated constitutional rights).

241. See Young, 2001 U.S. App. LEXIS 1328, at 15-17 (explaining that the “know or should have known” standard as it relates to an officer’s “deliberate indifference” to potentially harmful conduct is).

242. See Young, 2001 U.S. App. Lexis 1328, at 15-17 (adding the requirement of egregious police conduct to the “deliberate indifference” standard).

243. See Sacramento v. Lewis, 523 U.S. 833, 845-46 (1998) (stating that for a “half century now[,] we have spoken of the cognizable level of executive abuse of power as that which shocks the conscience”).

244. See Young, 2001 U.S. App. LEXIS 1328, at 17-19 (discussing Supreme Court
significantly different from the “shocks the conscience” requirement of Fourteenth Amendment Due Process violations.\textsuperscript{245} Further, even with proof that a use of force, an arrest, or other conduct was illegal, an officer can claim a defense that he acted in good-faith.\textsuperscript{246} A plaintiff in Guerrero’s shoes, therefore, confronts multiple burdens to stating a cognizable section 1983 claim, even with definitive proof of illegal conduct.

\textbf{B. Municipal Liability Nearly Beyond Reach}

Under section 1983, it is nearly impossible to hold police departments or municipalities liable for constitutional violations\textsuperscript{247} Even naming chiefs of police or supervisory officers not directly involved in the misconduct is nearly impossible. To hold a policy-maker liable pursuant to section 1983, the plaintiff must first show the official deliberately ignored the risk that an officer, or many officers, may violate citizens’ rights.\textsuperscript{248} A police chief’s failure to train officers properly, therefore, is not actionable unless the chief knew such failure would likely lead to abuse.\textsuperscript{249}

The United States Supreme Court greatly heightened this standard in \textit{Bryan County Board of Commissioners v. Brown}.\textsuperscript{250} In \textit{Bryan County}, the precedent that prison officials violate the Eighth Amendment when they show deliberate indifference to a prisoner’s health needs).\textsuperscript{245} See \textit{Schaefer v. Goch}, 153 F.3d 793, 797 (7th Cir. 1998) (stating, “[d]eliberate indifference, in fact, is merely the manifestation in certain situations of a more general inquiry, which is whether the government conduct at issue ‘shocks the conscience’”).

\textsuperscript{246} See \textit{Miller}, supra note 216, at 155 (discussing the availability of a good faith defense in section 1983 actions).  \textsuperscript{247} See Susan Bandes, \textit{Patterns of Injustice: Police Brutality in the Courts}, 47 B UFF. L. REV. 1275, 1331 (1999) (offsetting court decisions limiting systematic liability against municipalities with the intent of section 1983, which was to protect the powerless).

\textsuperscript{248} See \textit{City of Canton v. Harris}, 489 U.S. 378, 388-92 (1989) (establishing and discussing the deliberate indifference standard). In \textit{Canton}, the plaintiff alleged she did not receive required medical care while in police custody, and that this failure amounted to a section 1983 violation because the municipality provided no training to officers so they could determine when care is required. \textit{Canton}, 489 U.S. at 389-92. The trial court found for the plaintiff, and the verdict survived through the federal court of appeals. \textit{Id.} The U.S. Supreme Court, however, reversed and remanded, holding failure to train is only actionable pursuant to section 1983 when it demonstrates deliberate indifference to citizens’ rights. \textit{Id.}

\textsuperscript{249} See \textit{Canton}, 489 U.S. at 394 (O’Conner, J., concurring) (agreeing with the majority that municipal conduct did not rise to the level of purposeful neglect, or deliberate indifference, but parting with the majority on its decision to remand).

\textsuperscript{250} Board of County Comm’rs v. Brown, 520 U.S. 397 (1997) (vacating lower court judgment against County for hiring a deputy with previous misdemeanor convictions for assault and battery). In \textit{Brown}, the plaintiff was injured when a county deputy pulled her from a vehicle following a police chase. \textit{Id.} Brown claimed that the sheriff inadequately screened the deputy for prior convictions and thus violated section 1983 because the deputy had a history of misdemeanor convictions, including one for assault and battery. \textit{Id.} At trial, the county was held liable, and this
Court held that to establish liability of supervisory officers not directly involved in misconduct, a section 1983 plaintiff must show not only deliberate indifference of likely constitutional violations, but also indifference to the risk that the particular officer was “likely to inflict the particular injury suffered.” Therefore, for Guerrero to prevail in his section 1983 claim against named supervisors and former chiefs of police, he must prove they deliberately ignored the risk that the officers who arrested him not only would act illegally, but would commit the specific acts he alleges.

The possibility of municipal liability for injunctive relief under section 1983 was virtually eliminated with *Los Angeles v. Lyons*. In *Lyons*, the Supreme Court denied standing to a plaintiff challenging the common use of chokeholds by Los Angeles Police Department officers. Even though Lyons was rendered unconscious and had his larynx damaged by the unjustified use of a chokehold, and evidence demonstrated that such illegal holds would continue, standing for an injunction barring the use of such restraint was denied because he could not show a concrete likelihood that he personally would again be stopped and choked. Injunctive relief pursuant to section 1983 is not available to Guerrero, therefore, unless he can demonstrate he personally is likely to again be arrested and again suffer the same violations of constitutional rights.

C. Minimal Statute of Limitations

Actions pursuant to section 1983 are governed by the applicable forum state’s statute of limitations for the specific harm alleged.

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251. *Board,* 520 U.S. at 412 (explaining that the “connection between the background of the particular applicant and the specific Constitutional violation alleged must be strong”).

252. *See Plaintiff’s Opposition,* supra note 49, at 1 (setting forth allegations of civil rights violations).


254. *Id.* at 97-98 (describing the use of the holds, which impede blood-flow to the brain by suppressing the carotid artery).

255. *Id.* at 108 (stating, “it may be that among the countless encounters between the police and the citizens of a great city such as Los Angeles, there will be certain instances in which strangleholds will be illegally applied and injury and death unconstitutionally inflicted on the victim.”).

256. *Id.* at 111 (stating that the equitable relief of an injunction against the city is unavailable to Lyons unless he can demonstrate that he personally “will again be wronged in a similar way”).

Excessive use of force and other police misconduct claims, therefore, are likely governed by the forum’s personal injury statute of limitations. This, of course, creates varied time-frames for bringing suit, and as little as one year may pass before an injured party is time-barred.

D. Section 1983 Insufficient

Simply put, section 1983 provides little hope of forcing systemic change upon police departments plagued with misconduct and abuse. Section 1983 jurisprudence creates a situation where, in most instances, neither the police department nor the individual officer is subject to liability. Section 1983, therefore, leaves plaintiffs in Guerrero’s position with scant opportunity for either compensation for injuries or for forcing reform upon police departments.

IV. The Hope of Civil RICO

While there is no caselaw except for Guerrero on the use of civil RICO against police officers and departments, potential benefits of the statute can be identified by examining general RICO jurisprudence. To finalize the basis for this Comment’s conclusions, this section expands upon Part I’s discussion of civil RICO elements. With the problems of section 1983 as a backdrop, this segment explains how the thorny “intent” element of section 1983 is reduced under civil RICO. Further, statute of limitations problems inherent in constitutional torts fade away under this new theory of police liability. Finally, the powerful treble damage provisions of civil RICO law governs the “characterization” of a section 1983 claim, i.e., as a personal injury claim, state law then controls the statute of limitations for that area of law.

258. See McDougal v. Imperial, 942 F.2d 668, 673-74 (9th Cir. 1991) (stating that section 1983 claims in California are subject to California’s statute of limitations for personal injury torts).
259. See McDougal, 942 F.2d at 673-74 (stating California personal injury statute of limitations is one year). Compare Cal. Civ. Proc. Code § 340(3) (West 2000) (providing the applicable statutory language for the one-year statute of limitations), with Wilson, 471 U.S. at 263 (stating New Mexico’s personal injury statute of limitations is three years).
260. See Derrick Bell, Race, Racism and American Law 478 (4th ed. 2000) (commenting: “[w]hile § 1983, on its face, is the appropriate statute for challenging police departments and other local governmental agencies and for requesting equitable relief, the Court’s jurisprudence has closed the avenue of relief”).
262. See Booth, supra note 32 (explaining that the Guerrero case is the first instance of such a claim proceeding).
are examined.

A. Intent

RICO, civil or criminal, contains no intent element.\textsuperscript{263} Rather, the intent required for RICO purposes is only that necessary for committing the predicate acts themselves.\textsuperscript{264} This remains true even if the predicate acts are not specific intent crimes.\textsuperscript{265} To hold an officer who extorts a citizen as part of a racketeering pattern or practice\textsuperscript{266} liable under civil RICO, therefore, the plaintiff must only prove an intent to extort. Further, a good faith defense like that available for section 1983 suits,\textsuperscript{267} appears inapplicable to RICO.\textsuperscript{268} Plaintiffs such as Guerrero, therefore, can more likely prove culpable intent of the officers under civil RICO than under prevailing means of addressing police misconduct.

B. Statute of Limitations

In 1987, the Supreme Court resolved conflicting authority regarding the civil RICO statute of limitations, applying a four-year period to all such claims.\textsuperscript{269} The limitations period begins running when the plaintiff discovers, or should have discovered, his injury.\textsuperscript{270}


\textsuperscript{264} See United States v. Scotto, 641 F.2d 47, 56 (2d Cir. 1980) (holding that the \textit{mens rea} required for RICO is no different from that required for the predicate offense), \textit{cert. denied}, 452 U.S. 961 (1981).

\textsuperscript{265} See United States v. Baker, 63 F.3d 1478, 1493 (9th Cir. 1995) (holding that because underlying predicate racketeering act does not demand showing of intent to violate law, “the defendants can be guilty of conspiring to violate RICO even if they were not aware their actions were illegal”).

\textsuperscript{266} See \textit{supra} Part I.B.2 (discussing RICO pattern element).


\textsuperscript{268} For example, it is unlikely a court would accept a RICO defendant’s claim that he did illegally engage in a pattern of racketeering activity, but had a good faith belief that racketeering was not illegal.


\textsuperscript{270} See \textit{Rotella}, 528 U.S. at 552-53 (2000) (declaring the rule as the statute of limitation begins running when the plaintiff discovers, or should have discovered, the injury). \textit{Rotella} sought to resolve the confusion about accrual of the civil RICO limitations period. Prior to the case, in some jurisdictions accrual did not begin until the plaintiff also discovered the existence of racketeering pattern. \textit{Id.} at 535-55.
Thus, pleading civil RICO provides plaintiffs, such as Guerrero, with a significant statute of limitations, allowing more time to identify defendants, build the case, and perform other tasks necessary for a successful suit. If Guerrero sued in California state court, for example, he would face a one-year statute of limitations. Absent equitable tolling, therefore, the majority of Guerrero’s claims would have been time-barred if brought pursuant to California law.

C. Damages: Triple Threat

The proviso for treble damages is perhaps the most powerful of all civil RICO provisions. Indeed, providing such substantial damages was a key means by which Congress intended to cripple RICO targets. In the course of the Rampart scandal, this provision could set Los Angeles’ liability at as much as six-hundred million dollars.

As civil damages are seen as a fundamental tool to force reform upon resistant police forces, use of RICO could greatly increase the likelihood of fundamental change. Further, given the general difficulty of bringing a suit against a police officer for kidnapping, bribery, extortion, and other forms of misconduct, the possibility of

271. See Sanchez, supra note 48 (reporting that the statute of limitations for Guerrero under California law is one year). See generally Wooster, supra note 269 (discussing issues regarding accrual of civil RICO statute of limitations).

272. He was allegedly abused in 1997 and filed suit three years later. While equitable tolling remains possible, it adds an additional burden. See Plaintiff’s Opposition, supra note 49, at 1; see also Sanchez, supra note 48 (reporting that Guerrero was arrested in November 1997).

273. Civil RICO provides:
Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. 18 U.S.C. § 1964(c) (1994 & Supp. 1999).

274. See Kobylak, supra note 72, at 545 (asserting that the “most significant” provision of § 1964(c) is the provision for treble damages).

275. See Mauriber v. Shearson/Am. Express, Inc., 546 F. Supp. 391, 395 (S.D.N.Y. 1982), later proceeding at 567 F. Supp. 1231 (S.D.N.Y. 1983) (stating that the treble damages provision most significant aspect of the act); see also Kobylak, supra note 72, at 545 (observing that the “potency” of treble damages underscores congressional intent to create a powerful “arsenal of weapons” in civil RICO).

276. See Sanchez, supra note 48 (observing that before the possibility of RICO suits was raised by Guerrero, Los Angeles city officials were estimating one-hundred to two-hundred million dollars in potential civil liability as a result of the Rampart scandal).

277. See generally sources listed supra note 220 (discussing efforts to recover civil damages for police misconduct).

278. See HUMAN RIGHTS WATCH, supra note 2, at 37 (discussing inability of both civil and criminal law to stem the tide of rampant police misconduct throughout the nation).
not only treble damages but also recovery of fees\textsuperscript{279} may well enable a greater number of injured parties to seek redress.

V. MORE HARM THAN GOOD?

While promising, civil RICO is not necessarily a panacea. In \textit{City of Newport v. Fact Concerts, Inc.},\textsuperscript{280} the U.S. Supreme Court insulated municipalities from punitive damages under section 1983.\textsuperscript{281} Commenting that “considerations of history and policy do not support exposing a municipality to punitive damages for the bad-faith actions of its officials,”\textsuperscript{282} the Court erected a prudential barrier that remains intact.

Debate over the value and scope of this judgment persists,\textsuperscript{284} but the principle is well-established.\textsuperscript{285} In \textit{City of Newport},\textsuperscript{286} the Supreme Court reasoned that section 1983 punitive awards against municipalities do not deter constitutional torts more effectively than damage awards against the individual actor.\textsuperscript{287} Additionally, the Court ruled that punitive damages against municipalities unfairly penalize taxpayers.\textsuperscript{288}

Of course, civil RICO does not provide for punitive damages,\textsuperscript{289} and

\begin{itemize}
  \item \textsuperscript{279} See 18 U.S.C. § 1964(c) (1994 & 1999) (providing for recovery of “reasonable attorney’s fees” in Rico cases).
  \item \textsuperscript{280} 453 U.S. 247 (1981).
  \item \textsuperscript{281} \textit{See City of Newport}, 453 U.S. at 271 (refusing to award punitive damages, absent compelling circumstances, against the municipality).
  \item \textsuperscript{282} \textit{Id.}
  \item \textsuperscript{283} Recently, the U.S. Court of Appeals for the Second Circuit extended to cities almost complete immunity from section 1983 punitive damages claims. \textit{See Ciraoio v. City of New York}, 216 F.3d 236, 242 (2d Cir.) (holding city immune from section 1983 punitive damage claim), \textit{cert. denied}, 2000 WL 1376675 (U.S. Nov. 13, 2000).
  \item \textsuperscript{285} \textit{See Constitutional Law, supra} note 284, at 666 (explaining the state of the law regarding municipal punitive liability pursuant to section 1983).
  \item \textsuperscript{286} Decided June 1981.
  \item \textsuperscript{287} \textit{See City of Newport}, 453 U.S. at 269-70 (asserting that “allowing juries and courts to assess punitive damages in appropriate circumstances against the offending official, based on his personal financial resources” is a better deterrent than punitive damages because it protects against constitutional encroachment while sparing “the citizen-taxpayer” the increased cost of a punitive award against the municipality).
  \item \textsuperscript{288} \textit{Id.}
  \item \textsuperscript{289} \textit{See Liquid Air}, 834 F.2d at 1310 (holding civil RICO damages compensatory rather than punitive); \textit{see also} supra note 183 (discussing compensatory nature of RICO treble damages provision).
\end{itemize}
does not allow suits against municipalities. However, its treble damages provision exposes cities as indemnifiers of its police officers and thus to enormous civil liability. The policy underpinnings for forbidding section 1983 punitive damages against municipalities, therefore, can logically extend to the civil RICO context.

Los Angeles’ expected liability from the Rampart scandal already may impact city services and programs, and increased civil RICO damages will further tax city coffers. It is possible that civil RICO awards will diminish city resources so severely that no funds will be available for the training and oversight needed to clean up the LAPD. RICO suits, therefore, may unwittingly increase the likelihood that officers such as those implicated in the Rampart scandal will remain on the streets.

CONCLUSION

Despite concerted efforts for many years, the Los Angeles Police Department has resisted reform and persisted in a pattern of severe misconduct. Numerous other police forces demonstrate similar resistance to reform and continue tolerating systemic abuse. Decades of civil suits have failed to achieve reform and criminal law simply provides scant hope for the injured. Los Angeles demonstrates that even the most shocking abuses of police power at times evade redress. Adding insult to decades of injury for Angelenos concerned with police misconduct, California Superior Court Judge Jacqueline Conner reversed state criminal convictions of three Rampart officers on December 23, 2000.

290. See supra note 153 and accompanying text (explaining why municipalities cannot be sued under RICO).
292. See supra note 55 and accompanying text (describing Los Angeles’s increased civil liability resulting from civil RICO suit).
293. See supra notes 281-287 and accompanying text (discussing the reasoning behind section 1983 punitive award prohibition).
294. See Booth, supra note 32 (estimating the city’s civil liability from the Rampart Scandal at $400 million).
295. See id. (reporting that money from the Los Angeles’ tobacco settlement fund may be used to cover its civil liability from the Rampart scandal).
296. See Levinson, supra note 284, at 370-73 (asserting that constitutional tort damages against government entities are counterproductive, leading to over deterrence and increased, rather than decreased, societal costs).
the Rampart scandal, the three were convicted in November based on allegations they conspired to frame suspects.\footnote{See Three LAPD officers convicted in corruption scandal, at http://www.cnn.com/2000/LAW/11/15/lapd.verdict.crim (Nov. 15, 2000) (reporting the jury verdict convicting Sergeants Edward Ortiz and Brian Liddy and Officer Michael Buchanan of conspiracy).} As a microcosm, therefore, Los Angeles demonstrates that traditional legal methods have not solved pervasive patterns of misconduct by law enforcement.

Civil RICO is an excellent tool to employ in the ongoing effort to clean up troubled forces. By providing powerful remedies, it may indeed compel reform within recalcitrant departments. The statute’s less burdensome culpable intent requirement, laundry list of predicate acts, provisions for treble damages, extended statute of limitations, and firmly rooted applicability to many forms of misconduct seem perfectly-suited for the civil rights plaintiff.

Regardless of Guerrero’s specific outcome, however, he has helped forge a new tool future plaintiffs may successfully wield. By ruling Guerrero can proceed with claims the LAPD is a criminal enterprise, Judge Rea thrust the ongoing pattern of police misconduct onto the front page. Given jurors’ general bias in favor of police officers, such news can help level the ground in the jury pool.

In her seminal essay \textit{The Master's Tools Will Never Dismantle the Master's House},\footnote{\textit{Supra} note 1.} Audrey Lorde cautions the methods of the elite “may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change.”\footnote{\textit{Id.} at 112.} The danger that civil RICO awards will so severely tax municipal resources that they do more harm than good is real. Perhaps, as Lorde would fear, the civil RICO tool cannot deliver true reform. Further, only time will tell if the Supreme Court will impose the prudential barriers of section 1983 onto the civil RICO model. The judiciary’s general support of criminal RICO prosecutions and an abundance of civil RICO suits in other spheres bodes well for the viability of civil RICO, however.

Ultimately, perhaps the specter of civil RICO will force law enforcement to better police itself, taking officers like Perez and the other implicated Rampart CRASH officers off the street after credible complaints from citizens and before another Ovando shooting. Even if civil RICO does not achieve substantive change, at least some victims of police misconduct may prevail and win relief. Given the revelations of massive misconduct in Los Angeles, plaintiffs such as Guerrero need all the tools available in the legal shed.