

USING THE MASTER’S TOOLS:¹ FIGHTING PERSISTENT POLICE MISCONDUCT WITH CIVIL RICO

STEVEN P. RAGLAND*

TABLE OF CONTENTS

Introduction	140
A. Rampart Misconduct	142
B. <i>Guerrero v. Gates</i> Breaks New Ground	145
I. Civil Rico	147
A. RICO’s Origin and Purpose	148
B. The Elements: Meeting the Threshold	149
1. Cognizable injury	152
2. Pattern	153
3. Enterprise	156
4. Affecting interstate commerce	159
II. Honing the Tool.....	160
A. Not Just for Gangsters	162
B. Good for the Goose	164
C. Good for the Gander.....	165
III. Inadequacies of Section 1983	167
A. Section 1983 Poses Significant Pleading Burdens	169

* Senior Articles Editor, *American University Law Review*, Volume 51; J.D. Candidate, May 2002, *American University, Washington College of Law*, B.A., 1992, *Lehigh University*, *high honors*. I wish to thank Professor Michael E. Tigar for his comments on early drafts and his mentorship. Special thanks to my editor, Kevin S. Willen, for his eagle eye and high standards. Credit also goes to John and Irene Ragland whose support and encouragement makes all of this possible. Above all, thank you to Erika Rivera Ragland, my muse, my foundation, and my bride.

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.

B. Municipal Liability Nearly Beyond Reach.....	170
C. Minimal Statute of Limitations.....	171
D. Section 1983 Insufficient.....	172
IV. The Hope of Civil RICO.....	172
A. Intent.....	173
B. Statute of Limitations.....	173
C. Damages: Triple Threat.....	174
V. More Harm Than Good?.....	175
Conclusion.....	176

INTRODUCTION

The image captivated the world: more than a dozen Los Angeles Police Department (LAPD) officers surrounding and beating African-American motorist Rodney King.² 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.³ 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.⁴ Reportedly, King pleaded for officers to stop while they continued assaulting him and laughing.⁵ A bystander captured the scene on videotape and it was broadcast worldwide.⁶ Charges were brought against four of the officers who beat King.⁷ Even though all but one was acquitted on criminal charges,⁸ many believed police misconduct rampantly

2. See HUMAN RIGHTS WATCH, *SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES 199-200* (1998) (describing the extent of the Rodney King beating).

3. See Alex Prud'Homme, *Police Brutality! Four Los Angeles Officers are Arrested for a Vicious Beating, and the Country Plunges Into a Debate on the Rise of Complaints Against Cops*, TIME, Mar. 25, 1991, at 16 (recounting details of the King beating).

4. See *id.* (describing the extent of King's injuries).

5. See *id.* at 18 (reporting an eyewitness account of the beating).

6. See HUMAN RIGHTS WATCH, *supra* note 2, at 200 (reporting on the worldwide broadcast of the videotape beating of Rodney King).

7. See Seth Mydans, *Officers in Beating Case File 30 Pretrial Motions*, N.Y. TIMES, May 7, 1991, at A23 (reporting that Sergeant Stacey Koon, and Officers Theodore Briseno, Laurence Powell, and Timothy Wind faced charges stemming from the King beating).

8. See *A Jarring Verdict, An Angry Spasm*, TIME, May 11, 1992, at 10 [hereinafter *Jarring*] (discussing the verdict in the criminal trial of officers involved in the Rodney King beating and the nationwide riots that it sparked); see also Adam Cohen et al., *Gangsta Cops. As the L.A.P.D. Scandal Keeps Growing, a City Asks Itself, How Could the Police Have Gone So Bad?*, TIME, Mar. 6, 2000, at 31 (citing "the pervasive corruption [of the LAPD] of the 1930's and '40's" as a factor in the lawlessness pervaded by uncontrollable police officers).

Officer Laurence Powell and Sergeant Stacey Koon were later convicted in federal court of violating Rodney King's civil rights, pursuant to 18 U.S.C. § 242. See *United States v. Koon*, 833 F. Supp. 769, 774 (C.D. Ca. 1993) (detailing the district court case against the officers). Section 242 prohibits a deprivation of civil rights under color of law, and government's equivalent of 42 U.S.C. § 1983; see also 18 U.S.C. § 242

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* HUMAN RIGHTS WATCH, *supra* note 2, at 201 (commenting that the riots demonstrated that African-Americans felt they were not treated fairly even when apparent injustice is videotaped).

11. *See id.* (reporting that more than two thousand people were injured, and fifty four were killed during the Los Angeles riots). Estimates on property damage from the riots range from seven hundred million to nine hundred million dollars. *Id.* (citing James D. Delk, *Fires and Furies: The L.A. Riots*, ETC PUBLICATIONS (1995) (estimating 700 million dollars in damage); LOU CANON, OFFICIAL NEGLIGENCE 347 (1997) (estimating 900 million)).

12. *See* Jarring, *supra* note 8 (discussing doubts about LAPD practices prompted by the acquittal of the officers involved in King beating).

13. *See* *All the World Lost Faith in the American Courts System*, TIME, May 18, 1992, at 23 (reacting in part to the acquittal of the officers involved in the Rodney King beating *Time* magazine quoted Muammar Qadhagfi saying "All the world lost faith in the American courts system").

14. *See* HUMAN RIGHTS WATCH, *supra* note 2, at 201 n.11 (discussing the formation of the Independent Commission on the Los Angeles Police Department).

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

16. *See* CHRISTOPHER COMMISSION REPORT, *supra* note 9, at Appendix (reprinting Los Angeles Mayor Tom Bradley's April 1, 1991 statement detailing the responsibilities and scope of the Christopher Commission); *see also* HUMAN RIGHTS WATCH, *supra* note 2, at 201 n.11 (discussing Mayor Bradley's charge to the Christopher Commission).

17. *See* CHRISTOPHER COMMISSION REPORT, *supra* note 9, at 32 (finding that

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.¹⁸ For example, Los Angeles paid \$70,000 in a civil settlement for injuries delivered by Officer Laurence Powell,¹⁹ one of the officers involved in the King beating,²⁰ 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.²¹

A. Rampart Misconduct

A second scandal erupted in 1999, this time involving officers in the Rampart CRASH²² 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.²³ As part of a plea agreement, Perez cooperated with authorities, providing details of systemic misconduct within Rampart’s elite anti-gang CRASH unit.²⁴ According to sworn statements, Rampart officers regularly planted evidence, framed suspects, committed perjury in court, and beat innocent civilians for sport.²⁵ In one incident, Rampart officers apparently framed and shot nineteen-year-old Javier Francisco Ovando.²⁶ 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).

23. Bryan Robinson, *Rampart Scandal Sparks Reviews—Public Defender: 30,000 Cases to Be Reevaluated*, ABCNEWS.com (Aug. 10, 2000), at <http://abcnews.go.com/sections/us/DailyNews/rampart000810.html> (detailing the conduct that led to reports of police misconduct). See generally Cohen, *supra* note 8 (providing an overview of the Rampart scandal).

24. See Cohen, *supra* note 8, at 31-33 (detailing allegations inculcating dozens of officers).

25. See *id.* (reporting alleged misconduct of Rampart officers).

26. See John Cloud & James Willwerth, *L.A. Confidential, for Real Street Cops Accused of Frame-Ups in Widening Scandal*, TIME, Sept. 27, 1999, at 44 (reporting Perez’s allegations and detailing Ovando’s story).

prison, is paralyzed from the shooting, and may now face deportation proceedings.²⁷ Based on this scandal, and revelations such as those in the Ovando case, almost one hundred convictions have been overturned²⁸ 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.²⁹

The King and Rampart CRASH scandals³⁰ heightened fears that the LAPD's misconduct remained unabated and underscored the inability of traditional legal efforts to force change.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.³² The decree forestalled a lawsuit by the federal government over the pattern and practice of police misconduct that even Los Angeles officials acknowledge.³³ While the consent decree imposes some reforms,³⁴ critics remain skeptical that it will solve the department's problems.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.³⁶ Some believe this fury of

27. See *id.* (reporting the details of Ovando's incarceration and release).

28. See Robinson, *supra* note 23 (reporting on the fallout of the scandal).

29. See *id.* (detailing the Los Angeles Public Defender's reaction to the Rampart scandal).

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").

31. See *infra* notes 234-261 and accompanying text (discussing the inability of civil recovery as a factor in the continuation of police misconduct).

32. See William Booth, *Outsiders to Oversee Reforms at LAPD: Los Angeles' Consent Decree With Justice Dept. Will Avoid Federal Lawsuit for 'Pattern of Misconduct'*, WASH. POST, Sept. 22, 2000, at A3 (reporting that Los Angeles entered a consent decree with the Justice Department and providing details on the agreement); see also Tem Verdin, *LA Police Corruption Scandal Turns Uglier*, ABCNEWS.com (Dec. 17, 2000), at <http://abcnews.go.com/sections/us/DailyNews/lapd000315.html> (discussing the Los Angeles police chief's refusal to cooperate with United States Attorney Gil Garcetti in the Rampart probe).

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.").

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").

35. See *id.* (quoting Los Angeles civil rights attorney Stephen Yagman, who represents Louie Guerrero 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.*

36. See *id.* (covering the expected consequences of the Rampart scandal for the city of Los Angeles).

civil litigation and the re-opening of criminal cases may effectively root out corruption and restore hope.³⁷ However, given the startling allegations of massive LAPD misconduct³⁸ and the failure of past civil litigation to halt abuse,³⁹ new approaches are needed.

Civil suits against the LAPD, and police forces in general, are not uncommon.⁴⁰ Rodney King, for example, won a multi-million dollar judgment against two of the officers who beat him.⁴¹ However, with the potential reversal of hundreds of convictions due to the Rampart scandal,⁴² Los Angeles now stares down the barrel of enormous civil liability and may have to dip into funds from the 1998 tobacco settlement⁴³ to ante up.⁴⁴

The likely basis of most of these expected civil actions will be 42 U.S.C. § 1983 (“§ 1983”), the most common cause of action in suits against police.⁴⁵ However, at least one pending case—*Guerrero v. Gates*⁴⁶—is moving forward not just under § 1983 but also under the civil arm of the Racketeer Influenced and Corrupt Organizations Act⁴⁷ (“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).

43. California receives \$468 million annually as part of the 1998 national settlement with tobacco companies. See Dan Morain, *Record Davis Budget Relies on Continued Prosperity*, L.A. TIMES, Jan. 11, 2001, at A1 (discussing California’s tobacco settlement expenditures).

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).

45. See MICHAEL AVERY & DAVIS RUDOVSKY, POLICE MISCONDUCT: LAW AND LITIGATION 1-5 (1995) (discussing prevalence of section 1983 suits addressing police misconduct). For a discussion of 42 U.S.C. § 1983 and its use in the police misconduct context, see *infra* Part III.

46. See *Guerrero v. Gates*, 110 F. Supp. 2d 1287, 1293 (C.D. Cal. 2000) (denying defendant’s motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) and holding that plaintiff has standing to plead RICO claim).

47. 18 U.S.C. § 1964 (1994 & Supp. 2000). See 18 U.S.C. § 1964(c) (providing that “[a]ny 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

theory for such cases.⁴⁸

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.⁴⁹ He alleges Rampart CRASH Unit officers planted drugs on him, used excessive force, filed false charges, and caused his unlawful imprisonment.⁵⁰ He pleaded constitutional violations pursuant to § 1983, among other causes of action.⁵¹ In itself, the § 1983 count, although based on the most massive police misconduct scandal in the city's history,⁵² is not particularly novel from a legal perspective.⁵³ However, Guerrero's pleadings also include a civil RICO cause of action.⁵⁴ 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.⁵⁵

This novel use of civil RICO follows the continued expanded application of RICO to defendants other than those involved in

district court and shall recover threefold the damages he sustains and the cost of the suit. . . ."). See generally 18 U.S.C. §§ 1961-1968 (1994 & Supp. 2000) (entire Racketeer Influenced and Corrupt Organizations Act).

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.⁵⁶ 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,⁵⁷ even if such use was never intended by the authors of the legislation.⁵⁸

This Comment argues that allowing a civil RICO cause of action for plaintiffs such as Guerrero is appropriate and justified,⁵⁹ especially when courts have allowed suits to proceed⁶⁰ under RICO theories that are even more attenuated from original legislative intent.⁶¹ For the purposes of this Comment, “police misconduct” refers to pervasive patterns of behavior such as those evident in Los Angeles.⁶²

To understand how a law created to augment the government’s enforcement arsenal⁶³ can justifiably be turned against those it was

56. See Congressional Statement of Findings and Purpose, Organized Crime Control Act, Oct. 15, 1970, § 1, 84 Stat. 922, 941-48 (1970) (current version at 18 U.S.C. §§ 1961-1968 (1994 & Supp. 2000)) [hereinafter Organized Crime] (detailing the legislative history of RICO, passed as Title IX of the OCCA of 1970); Dan A. Naranjo & Edward L. Pina, *Civil Rico: Overview on the Eve of the 200th Anniversary of the Federal Judiciary*, 21 ST. MARY’S L.J. 23, 24-27 (1989) (providing a brief overview of the legislative history of RICO and reporting that the RICO statute was “approved . . . in response to ineffective government efforts to stem the tide of organized crime”); see also G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 249-80 (1982) (providing a comprehensive review of the Act’s legislative history).

57. See *infra* notes 185-203 and accompanying text (discussing expansion of RICO). 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.

58. See Naranjo & Pina, *supra* note 56, at 57 (arguing that the “primary purpose” of RICO “was to facilitate criminal prosecutions of organized crime figures and to prevent the infiltration of legitimate businesses by criminal elements”).

59. 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.

60. 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.”).

61. See *infra* notes 185-202 and accompanying text (discussing RICO’s expansion).

62. See *supra* notes 23-36 and accompanying text (describing misconduct by police in Los Angeles). As discussed in Part I.B, to maintain a RICO cause of action, certain elements that demonstrate a pattern of misconduct that runs afoul of the specific acts prohibited by 18 U.S.C. §§ 1961-1962 are required.

63. See Organized Crime, *supra* note 56, at 922 (stating “the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.”). While meeting all the elements necessary to establish a *prima facie* case is

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 § 1983⁶⁴ plaintiff are discussed, as are other insufficiencies of § 1983, the most common means to redress police misconduct.⁶⁵ 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.

certainly the primary concern of plaintiffs, *see infra* Part I.B for a discussion of the elements, legislative intent cannot be ignored when a law treads into new territory. *Accord* Robert Force, *The Curse of Miles v. Apex Marine Corp.: The Mischief of Seeking "Uniformity" and "Legislative Intent" in Maritime Personal Injury Cases*, 55 LA. L. REV. 745, 745-48 (1995) (discussing the impact of legislative intent on the effort to provide compensation for personal injuries in maritime law, when at common law no wrongful death or survival cause of action existed).

64. 42 U.S.C. § 1983 (1994 & Supp. 2000).

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").

67. See 116 CONG. REC. 37,264 (1970) (reporting President Nixon's signing of 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).

70. See generally 18 U.S.C. §§ 1961-1968 (1994 & Supp. 2000) (the RICO statute).

71. See Organized Crime, *supra* note 56, at 947 (stating that RICO "shall be liberally construed to effectuate its remedial purposes").

72. See *United States v. Forsythe*, 429 F. Supp. 715, 720 (W.D. Pa. 1977) (stating that RICO is meant to prevent illegal activities from corrupting legitimate businesses and unions), *rev'd on other grounds*, 560 F.2d 1127 (3d Cir. 1977); see also Wesley Kobylak, Annotation, *Civil Action for Damages under 18 U.S.C.A. § 1964(C) of the Racketeer Influenced and Corrupt Organizations Act (RICO, 18 U.S.C.A. §§ 1961 et seq.) for Injuries Sustained by Reason of Racketeering Activity*, 70 A.L.R. FED. 538, 544 (1984) (stating that RICO is designed to prevent organized crime from invading and corrupting legitimate business enterprises).

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.⁷⁵ Given RICO's purpose of protecting legitimate enterprises from criminal corruption,⁷⁶ the LAPD officers' behavior is an appropriate RICO target.⁷⁷

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.⁷⁸ Generally, a plaintiff must demonstrate an injury in her business or property⁷⁹ as a result of racketeering activities as defined in the Act.⁸⁰ A person violates § 1962⁸¹ 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. SelecTV 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 *Sedima S.P.R.L. v. Imrex Corp.*, 473 U.S. 479, 496 (1985)), *cert. denied*, 531 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).

Generally, a plaintiff must demonstrate a violation of section 1962, which sets forth activities prohibited by RICO, to employ section 1964, which provides a private cause of action to individuals harmed by RICO violations. See 18 U.S.C. § 1962 (1994) (listing prohibited activities); 18 U.S.C. § 1961 (1994 & Supp. 2000) (providing definitions for the chapter).

79. 18 U.S.C. § 1964(c) (1994 & Supp. 2000).

80. See 18 U.S.C. § 1964(c) (1994 & Supp. 2000) (stating civil RICO elements); 18 U.S.C. § 1961(1) (1994 & Supp. 2000) (defining racketeering). Section 1961(1) provides:

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 pattern⁸² connected to creating, controlling, or acquiring an enterprise used for racketeering.⁸³ As RICO is a novel theory for police misconduct cases,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 . . .

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.

Id.

81. See 18 U.S.C. § 1962 (1994 & Supp. 2000) (listing prohibited activities).

82. See *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 *person* who engages in (2) a *pattern of racketeering activity* (3) connected to the acquisition, establishment, conduct, or control of an *enterprise*" violates RICO) (emphasis in original); see also Naranjo & Pina, *supra* note 56, at 28-29 (discussing the statutory elements of civil RICO).

83. See *H.J., Inc.*, 492 U.S. at 232 (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 *supra* note 48.

criminal arms of RICO share much, a defendant need not be convicted under criminal RICO to face a § 1964⁸⁵ suit.⁸⁶

1. *Cognizable injury*

Civil RICO entitles a plaintiff to damages only from an injury to “business or property.”⁸⁷ An injury to business or property is distinct from personal injuries,⁸⁸ for which RICO provides no relief.⁸⁹ Caselaw demonstrates, however, that pecuniary loss resulting from personal injuries caused by racketeering may constitute “self-evident injury” in a RICO case.⁹⁰ 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,⁹¹ 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.⁹²

85. See generally 18 U.S.C. § 1964 (1994 & Supp. 2000) (the RICO section which provides a civil cause of action to persons injured by activities prohibited by the act).

86. See *Sedima S.P.R.L. v. Imrex Corp.*, 473 U.S. 479, 488 (1985) (holding that civil RICO suit does not require a prior criminal RICO conviction or conviction of predicate acts stated in 18 U.S.C. § 1961(a)); see also *Berg v. First Am. Bankshares, Inc.*, 796 F.2d 489, 502 (D.C. 1986) (holding dismissal below improper because civil RICO action does not demand prior criminal conviction for predicate acts forming cause of action in complaint).

87. See 18 U.S.C. § 1964(c) (1994 & Supp. 2000) (stating a RICO claim lies if the plaintiff is “injured in his business or property by reason of a violation of § 1962”).

88. See *Grogan v. Platt*, 835 F.2d 844, 846-47 (11th Cir.), *reh’g 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”).

90. See *Shearin v. E.F. Hutton Group, Inc.*, 885 F.2d 1162, 1170 (3d Cir. 1989) (stating “loss of earnings, benefits and reputation constitute self-evident injury”) (cited in Plaintiff’s Opposition, *supra* note 49, at 5); accord *Hunt v. Weatherbee*, 626 F. Supp. 1097, 1101 (D. Mass. 1986) (stating income loss can be cognizable 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).

92. See *Sedima S.P.R.L. v. Imrex Corp.*, 473 U.S. 479, 521 (1985) (stating RICO provides no recovery for personal injuries); see also Annette M. Sansone, Annotation, *Recovery of Damages for Personal Injuries in Civil Action for Damages Under Racketeering*

Faced with a motion to dismiss for want of cognizable injury, Guerrero successfully argued⁹³ 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.⁹⁴ Ruling in Guerrero's favor, Judge Rea observed that pecuniary losses associated with personal injuries are compensable under civil RICO⁹⁵ and cited agreement among numerous federal districts and circuits.⁹⁶

2. *Pattern*

Even given a cognizable injury, the plaintiff must also demonstrate that a "pattern of racketeering activity" exists.⁹⁷ RICO § 1961(1)(A)⁹⁸ specifies racketeering activity as "any act or threat involving murder, kidnapping . . . bribery, extortion . . . or dealing in a controlled substance" and § 1961(1)(B)⁹⁹ includes obstruction of justice, obstruction of criminal investigations, tampering with or retaliating against a witness, victim, or informant on the list of racketeering activities.¹⁰⁰

Influenced and Corrupt Organizations Act (18 U.S.C.S. § 1964(c)), 96 A.L.R. FED. 881, 886-89 (1990) (discussing various personal injury cases dismissed for lack of cognizable RICO injury).

93. See *Guerrero v. Gates*, 110 F. Supp. 2d 1287, 1293 (C.D. Cal. 2000) (denying Defendant's Motion to Dismiss).

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).

96. See *id.* (citing, among other authorities, *Nat'l Asbestos Workers Med. Fund v. Philip Morris, Inc.*, 74 F. Supp. 2d 221, 233 (E.D.N.Y. 1999); *Libertad v. Welch*, 53 F.3d 428, 437 n.4 (1st Cir. 1995); *Jerry Kubecka, Inc. v. Avellino*, 898 F. Supp. 963, 968 (E.D.N.Y. 1995) (commenting that if murder victims had survived and been disabled, they "presumably" could assert a RICO claim for lost business earnings); *von Bulow v. von Bulow*, 634 F. Supp. 1284, 1309 (S.D.N.Y. 1986) (finding that a comatose victim of a murder attempt may have compensable damages under RICO for loss "of her committee and her inability to enjoy her personal and real property"); *Hunt v. Weatherbee*, 626 F. Supp. 1097, 1100-01 (D. Mass. 1986) (allowing lost wages recovery under RICO by victim of sexual harassment and discrimination)).

97. See 18 U.S.C. § 1962(a)-(c) (1994) (stating prohibition on gains coming from "a pattern of racketeering activity"); see also 18 U.S.C. § 1964(c) (1994 & Supp. 2000) (providing private civil right of action to persons injured by racketeering activity, as prohibited in section 1962 of the act); 18 U.S.C. § 1961(1) (1994 & Supp. 2000) (defining "racketeering activity").

98. 18 U.S.C. § 1961(1)(A) (1994 & Supp. 2000).

99. 18 U.S.C. § 1961(1)(B) (1994 & Supp. 2000).

100. See 18 U.S.C. § 1961(1)(A)-(B) (1994 & Supp. 2000) (defining racketeering activity).

A pattern is established by first demonstrating a minimum of two racketeering acts in a ten-year period.¹⁰¹ Additionally, some common scheme, plan, or motive must connect the acts.¹⁰² A pattern cannot, therefore, merely be a series of disconnected acts.¹⁰³ Furthermore, repetitive acts against a single victim within a small time frame do not establish a RICO pattern, as RICO demands an ongoing design.¹⁰⁴ Such ongoing design requires the acts be sufficiently different but still related.¹⁰⁵ Isolated improper acts are not enough to sustain a RICO claim.¹⁰⁶ Generally, to establish a RICO pattern, the plaintiff must show a threat of continuing activity¹⁰⁷ or a close period of repeated conduct,¹⁰⁸ although the latter showing may invite greater scrutiny by the court.¹⁰⁹

Because the predicate acts of racketeering need not be overt,¹¹⁰ 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

101. See 18 U.S.C. § 1961(5) (1994 & Supp. 2000) (stating requirements for RICO pattern); see also *Howard v. Am. Online Inc.*, 208 F.3d 741, 746 (9th Cir. 2000) (observing that at least two racketeering acts within a ten-year period must occur to establish a pattern), *cert. denied*, 531 U.S. 828, 121 S. Ct. 77 (Oct. 2, 2000); see also *Secon Serv. Sys., Inc. v. St. Joseph Bank & Trust Co.*, 855 F.2d 406, 420 (7th Cir. 1988) (holding that a single, isolated transaction does not meet RICO pattern requirement).

102. See *Berg v. First Am. Bankshares, Inc.*, 599 F. Supp. 500, 504 (D.C. 1984) (holding pattern requires at least two acts connected by a common scheme, plan, or motive).

103. See *United States v. Stofsky*, 409 F. Supp. 609, 614-15 (S.D.N.Y. 1973) (commenting that series of disconnected acts not sufficient to establish "pattern" under RICO), *aff'd*, 527 F.2d 237 (2d Cir. 1975).

104. See *Satellite Fin. Planning Corp. v. First Nat'l Bank*, 646 F. Supp. 118, 120 (D. Del. 1986) (holding that close similarity of predicate acts can preclude a finding of ongoing design).

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").

108. See *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 241 (1989) (holding RICO pattern established by existence of "closed period of repeated conduct" or threat of continuing activity). *But see* *W. Assoc. Ltd. v. Mkt. Square Assoc.*, 235 F.3d 629, 634 (D.C. Cir. 2001) (holding plaintiff failed to establish RICO pattern based on closed period of repeated conduct).

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.¹¹³ 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 § 1962¹¹⁸ 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).

112. See *Guerrero v. Gates*, 110 F. Supp. 2d 1287, 1293 (C.D. Cal. 2000) (allowing the suit to proceed under a civil RICO theory).

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 23 (reporting Perez's theft of drugs from evidence storage).

118. 18 U.S.C. § 1962 (1994 & Supp. 2000).

119. See HUMAN RIGHTS WATCH, *supra* note 2, at 178-98, 235-383 (detailing allegations and evidence of police misconduct in Atlanta, Ga.; Boston, Mass.; Chicago, Ill.; Detroit, Mich.; Indianapolis, Ind.; Minneapolis, Minn.; New Orleans, La.; New York, N.Y.; Philadelphia, Pa.; Portland, R.I.; Providence, R.I.; San Francisco, Cal.; and Washington, D.C.).

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.¹²⁴ Labor unions,¹²⁵ corporations,¹²⁶ and even individuals¹²⁷ can fit the definition. The definition remains silent on the applicability to state and local entities.¹²⁸ While the Supreme Court has not specifically addressed this definitional issue,¹²⁹ nearly all lower federal courts agree that state and local entities can constitute enterprises under RICO.¹³⁰

In *United States v. Freeman*,¹³¹ 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.¹³² Further, the court emphasized the enterprise need not benefit economically from the racketeering activity, as long as pecuniary gain motivated the predicate acts.¹³³ Criminal RICO enterprises¹³⁴ can include state and local police departments¹³⁵ and

124. See 18 U.S.C. § 1961(4) (1994 & Supp. 2000) (stating, “‘enterprise’ includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity”).

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).

127. See *von Bulow v. von Bulow*, 634 F. Supp. 1284, 1305 (S.D.N.Y. 1986) (holding an individual can constitute a RICO enterprise). See generally Thomas S. O’Neill, *Functions of the RICO Enterprise Concept*, 64 NOTRE DAME L. REV. 646, 656 (1989) (discussing the breadth of allowable RICO enterprises).

128. See Ellen S. Podgor, *State and Local Entities as RICO Enterprises: A Matter of Perception*, 98 W. VA. L. REV. 853, 854-56 (1996) (discussing whether state and local entities can be enterprises for RICO purposes and providing details on conflicting authority on the subject).

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. 1976), *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.¹³⁶

One significant hurdle in meeting the RICO enterprise element is the operation-or-management test introduced in *Bennett v. Berg*¹³⁷ and elucidated in *Reves v. Ernst & Young*.¹³⁸ This test requires the defendant be associated with the racketeering enterprise and participate in the conduct of its affairs.¹³⁹ The court in *Reves* held the gross misconduct¹⁴⁰ of an accountant who prepared fraudulent reports for a Farmer's Cooperative did not pass the *Bennett* operation-or-management test.¹⁴¹ Because the accountant had no role, direct or indirect, in conducting the Cooperative's affairs, his misconduct remained outside the scope of RICO.¹⁴²

While the operation-or-management test may eliminate potential defendants who hold non-managerial positions within the target enterprise,¹⁴³ the problem does not preclude a claim against officers within a police department. In *United States v. Ruiz*,¹⁴⁴ the court held defendant police officer's "illegal activities were clearly helped along by the authority vested in him as a police officer."¹⁴⁵ Further, the court commented that circumstantial evidence can establish the requisite nexus between the predicate racketeering acts and the enterprise.¹⁴⁶ A police officer can, therefore, participate in the operation or management¹⁴⁷ of the police department by using the police powers bestowed upon him by the department (i.e.,

1982) (Chicago city police department constitutes RICO enterprise).

136. See *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).

137. 710 F.2d 1361 (8th Cir.).

138. 507 U.S. 170 (1993).

139. See *id.* at 183-85 (explaining and applying the operation-or-management test).

140. The court referred to the accountant's "reprehensible acts." *Arthur Young & Co. v. Reves*, 937 F.2d 1310, 1324 (8th Cir. 1991), *aff'd sub nom.*, *Reves v. Ernst & Young*, 507 U.S. 170 (1993).

141. See *Reves*, 507 U.S. at 185 (holding conduct not actionable under RICO).

142. See *id.* at 186 (describing his conduct within the enterprise). Accord Ira Raphaelson & Michelle Bernard, *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 *Reves* and generally addressing the operation-or-management test).

143. Because, like the accountant in *Reves*, they lack the ability to effect the conduct of the enterprise.

144. 905 F.2d 499 (1st Cir. 1990).

145. *Id.* at 504.

146. See *Ruiz*, 905 F.2d at 504 (discussing requirements to establish nexus between predicate acts and enterprise).

147. See *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"). See generally Raphaelson & Bernard, *supra* note 142 (providing a detailed discussion of the operation-or-management test and recent applications of it).

“enterprise”) itself.¹⁴⁸ 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

148. *Accord Ruiz*, 905 F.2d at 504 (discussing the power inherent in “the reactions (fear and timorousness in some instances) which a police officer, uniquely, has the ability to engender in others by virtue of his position”) (emphasis added). It is the very position within the establishment itself, therefore, that necessarily enables a police officer to participate in the “operation or management” of the police department as a whole.

149. 1990 and 1993, respectively.

150. *See generally Reves*, 507 U.S. 170 (applying the operation or management test to a complicated financial arrangement and not to an “officer” within a targeted enterprise). The term “police officer” in fact is important as it demonstrates an authority to carry out operations of the police department. *See Raphaelson & Bernard, supra* note 142, at 690-95 (arguing that *Reves* was wrongly decided and providing an overview and analysis of Justice Souter’s dissent).

151. *See United States v. Owens*, 167 F.3d 739, 753-54 (1st Cir. 1999) (distinguishing *Reves* and holding it “does not apply where a party is determined to be inside a RICO enterprise”) (internal citation omitted) (citing *United States v. Houlihan*, 92 F.3d 1271, 1298-99 (1st Cir. 1996); *United States v. Gabriele*, 63 F.3d 61, 68 (1st Cir. 1995); *United States v. Hurley*, 63 F.3d 1, 9 (1st Cir. 1995), *cert. denied*, 517 U.S. 1105 (1996); *United States v. Oretto*, 37 F.3d 739, 751 (1st Cir. 1994)).

152. *Accord Owens*, 167 F.3d at 754 (holding *Reves* inapplicable to parties within the alleged RICO enterprise).

153. *See Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 404 (9th Cir. 1991) (holding RICO suit against municipal corporation cannot be maintained because “government entities are incapable of forming a malicious intent” for the predicate acts that must constitute a RICO violation); *Pedrina v. Chun*, 97 F.3d 1296, 1300 (9th Cir. 1996) (affirming dismissal of city entity from RICO action because of inability to form requisite malicious intent). The reader will note that while there is no separate intent requirement in the RICO act, a showing of intent to commit the predicate racketeering acts is still required.

154. *See Kobylak, supra* note 72, at 550 (observing, “even if the enterprise is an illegal enterprise, the civil plaintiff can sue only the ‘person’ and not the ‘enterprise’ for damages suffered from the racketeering activity.”) (citations omitted). The Annotation, *id.*, also notes courts have dismissed complaints when plaintiffs sued the enterprise rather than the individual RICO violators (citing *Parnes v. Heinold Commodities, Inc.*, 539 F. Supp. 199 (N.D. Ill.), *withdrawn, rereported*, 548 F. Supp. 20 (N.D. Ill. 1982)).

members, members of the City Attorney's Office¹⁵⁵ and more than 100 current or former members of the LAPD.¹⁵⁶

Finally, a plaintiff, or prosecutor, must establish a nexus between the predicate acts and a lawful RICO enterprise.¹⁵⁷ 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.¹⁵⁸ The effect of the racketeering acts on the enterprise may be either direct or indirect,¹⁵⁹ and the enterprise need not benefit from them.¹⁶⁰ In *United States v. Blackwood*,¹⁶¹ a police officer's attempts to influence the outcome of traffic court cases sufficiently satisfied the nexus between acts and enterprise.¹⁶² With Blackwood's criminal conviction affirmed,¹⁶³ 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.¹⁶⁴ Minimal acts of interstate commerce satisfy this requirement.¹⁶⁵ 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*).

161. *United States v. Blackwood*, 768 F.2d 138 (7th Cir. 1985).

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,¹⁶⁶ purchasing equipment manufactured in another state,¹⁶⁷ and placing or receiving interstate telephone calls.¹⁶⁸ As one commentator observed, "courts have engaged in little more than sheer conjecture to determine that the [interstate commerce] element is present."¹⁶⁹

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

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

RICO only requires a "minimal effect" on interstate commerce); *United States v. Rone*, 598 F.2d 564, 573 (9th Cir. 1979) (same); *see also* *United States v. Barton*, 647 F.2d 224, 233 (2d Cir. 1981) (same); Timothy Patton, *Civil RICO: Statutory and Implied Elements of the Treble Damage Remedy*, 14 TEX. TECH. L. REV. 377, 413 (1983) (discussing the affecting interstate commerce requirement and observing that "the nexus of the enterprise to interstate commerce" need only be minimal).

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).

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).

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

169. Louis Long, *Treble Damages for Violations of the Federal Securities Laws: A Suggested Analysis and Application of the RICO Civil Cause of Action*, 85 DICK. L. REV. 201, 240 (1981) (citing *United States v. Frumento*, 426 F. Supp. 797, 803 n.6 (E.D. Pa. 1976); *United States v. Vignola*, 464 F. Supp. 1091, 1097 (E.D. Pa.), *aff'd mem.*, 605 F.2d 1199 (3d Cir. 1979); *United States v. Fineman*, 434 F. Supp. 189 (E.D. Pa. 1977)).

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).

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.¹⁷² Indeed, the purpose of RICO was to provide not just “enhanced sanctions,”¹⁷³ but “new remedies”¹⁷⁴ with which to fight organized crime. As discussed below,¹⁷⁵ 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.¹⁷⁶ Civil RICO¹⁷⁷ creates elements that have no common law counterparts.¹⁷⁸ Coupled with section 1962,¹⁷⁹ the general RICO prohibitions, civil RICO provides a powerful framework for plaintiffs.¹⁸⁰ Provisions for nationwide service of process,¹⁸¹ recovery of treble damages,¹⁸² and attorney’s fees,¹⁸³ make civil RICO an attractive

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).

173. 1970 U.S. CODE CONG. & ADMIN. NEWS, 4007 (1970).

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). In Senator Hruska’s remarks upon introducing the Criminal Activities Profits Act in March 1969, President Nixon stated his support for the civil provisions of RICO even before the final law reached his desk. See *Measures Relating to Organized Crime: Hearings on S. 30, S. 994, Subcomm. on Criminal Laws and Procedures, Senate Comm. on the Judiciary, 91st Cong., 1st Sess. 449-50 (1969)*.

177. 18 U.S.C. § 1964 (1994 & Supp. 2000). The Act reads, in pertinent part:

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.

178. See *Cullen v. Margiotta*, 811 F.2d 698, 712-13 (2d Cir. 1987) (observing no common law counterparts exist for certain civil RICO elements).

179. 18 U.S.C. § 1962 (1994 & Supp. 2000) (delineating complete text of section provided *supra* note 80).

180. See Dana Wolff, *The Frontier of RICO Standing: Interpreting RICO’s Conspiracy Provision to Realize Congress’ Goal of Creating a Powerful Crime-Fighting Weapon*, 21 J. LEGIS. 147 (1995) (commenting, “RICO is like a double-barreled shotgun aimed at criminal enterprises; the government keeps a finger on the criminal trigger, and private plaintiffs stand ready to shoot with the civil trigger.”).

181. See *Wichita Fed. Sav. & Loan Ass’n v. Landmark Group, Inc.*, 674 F. Supp. 321, 325 (D. Kan. 1987) (observing RICO provides for nationwide service of process).

182. Civil RICO provides, “[a]ny person injured . . . shall recover threefold the

statute for the plaintiff's attorney.¹⁸⁴

A. *Not Just for Gangsters*

RICO's broad language is not unconstitutionally vague¹⁸⁵ and courts liberally construe the statute,¹⁸⁶ as Congress intended.¹⁸⁷ This expansive construction allows RICO to reach well beyond the Cosa Nostra¹⁸⁸ context.¹⁸⁹ Indeed, legislators never intended RICO to apply solely to organized crime in the traditional sense of the term.¹⁹⁰ As a result of this broad interpretation, criminal RICO is used not just against mafia¹⁹¹ but also against all manner of illegal activity, including white-collar crime,¹⁹² government corruption,¹⁹³ and

damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c) (1994 & Supp. 2000).

183. See 18 U.S.C. § 1964(c) (1994 & Supp. 2000) (providing for recovery of treble damages and attorney's fees). Interestingly, civil RICO's treble damages are not considered punitive but compensatory and have been held not to violate the excessive fines prohibition of the Eighth Amendment. See also *Liquid Air Corp. v. Rogers*, 834 F.2d 1297, 1310 (7th Cir. 1987) (holding fines not excessive and commenting that "they are largely compensatory in the special sense that they ensure that wrongs will be redressed in light of the recognized difficulties of itemizing damages").

184. See Patton, *supra* note 165, at 381 (observing provision for treble damages led to increase of civil RICO suits). The reader will note again that a conviction under criminal RICO is not required for a civil suit to proceed under section 1964. See *supra* note 86 and accompanying text.

185. See *United States v. Aleman*, 609 F.2d 298, 303 (7th Cir. 1979) (holding that the broad definition of "enterprise" includes legitimate as well as illegitimate businesses and is not unconstitutionally vague); *United States v. Dischner*, 974 F.2d 1502, 1508-09 (9th Cir. 1992) (holding enterprise definition in RICO not unconstitutionally vague); *United States v. Morelli*, 643 F.2d 402, 412-13 (6th Cir. 1981) (holding conduct provisions of RICO not unconstitutionally vague).

186. See *United States v. Forsythe*, 560 F.2d 1127, 1135-36 (3d Cir. 1977) (holding RICO should be liberally construed); *United States v. Kaye*, 556 F.2d 855, 860 n.7 (7th Cir. 1977) (calling for a broad reading of Rico).

187. See *Organized Crime*, *supra* note 56, at 947 (stating RICO "shall be liberally construed").

188. See generally UNITED STATES GENERAL ACCOUNTING OFFICE, EFFECTIVENESS OF THE GOVERNMENT'S ATTACK ON LA COSA NOSTRA (1998) (using the term Cosa Nostra to refer to the mafia).

189. See *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 248-50 (1989) (holding "pattern of racketeering activity" is properly interpreted broadly so that defendant need not be involved in organized crime as the term is traditionally understood).

190. See *H.J., Inc.*, 492 U.S. at 248-50 (applying RICO to a defendant not involved in traditional forms of organized crime).

191. See, e.g., *United States v. Pungitore*, 910 F.2d 1084 (3d Cir. 1986) (affirming conviction of members of the Philadelphia Nicodemo Scarfo family who were in violation of Rico).

192. See Raphaelson & Bernard, *supra* note 142, at 695 (referring to white collar crime prosecutions pursuant to RICO).

193. See Gerald E. Lynch, *RICO: The Crime of Being a Criminal*, 87 COLUM. L. REV. 661, 734-35 (1987) (observing that thirty percent of RICO prosecutions target alleged government corruption); see also cases cited by *id.* at 736-37 (including: *United States v. Robinson*, 707 F.2d 872 (6th Cir. 1983) (targeting a judge); *United*

prostitution rings.¹⁹⁴ The number of predicate offenses has expanded since 1970,¹⁹⁵ and the list is indeed extensive.¹⁹⁶

As with criminal RICO's expansion beyond organized crime,¹⁹⁷ civil RICO has enlarged in scope and reach.¹⁹⁸ This expansion was not without its critics¹⁹⁹ 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.²⁰⁰ Nevertheless, it has been successful, with

States v. Aimone, 715 F.2d 822 (3d Cir. 1983) (targeting mayor and other Union City, N.J. officials)).

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, robbery, 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").

198. See *Sedima S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1984) (observing, "[i]nstead of being used against mobsters and organized criminals, [RICO] has become a tool for everyday fraud cases brought against respected and legitimate enterprises) (internal quotations omitted) (citing findings of court below, *Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d 482, 487 (1984)); see also Sawkar, *supra* note 197, at 1134 n.5 (citing Kentucky Laborers Dist. Council Health & Welfare Trust Fund v. Hill & Knowlton, Inc., 24 F. Supp. 2d 755, 770 (W.D. Ky. 1998), which allowed civil RICO suit against tobacco companies); *Nat'l Org. of Women, Inc. v. Scheidler*, 510 U.S. 249, 262 (1994) (allowing civil RICO suit against members of anti-abortion group by explaining that the application of Rico in situations not specifically anticipated by Congress is a demonstration of breadth and not ambiguity)); see generally *Organized Crime*, *supra* note 56, at 947 (providing key language central to RICO's continued expansion: "[t]he provisions of . . . [RICO] shall be liberally construed to effectuate its remedial purposes").

199. See, e.g., Naranjo & Pina, *supra* note 56, at 58 (asserting that "[t]he expansive uses of RICO in the civil arena continue to have devastating results"); see also Faisal Shah, *Broadening the Scope of Civil RICO: Sedima S.P.R.L. v. Imrex Co.*, 20 U.S.F. L. REV. 339, 341 (1986) (observing that many courts, fearing abuse of the statute, "created limitations to narrow its reach"). See generally *id.* at 341-42 n.13 (citing several cases imposing limits on the RICO statute: *Hokama v. E.F. Hutton & Co.*, 556 F. Supp. 636, 643 (C.D. Cal. 1983); *Harper v. New Japan Secs. Int'l Inc.*, 545 F. Supp. 1002, 1007 (C.D. Cal. 1982); *Van Schaick v. Church of Scientology, Inc.*, 535 F. Supp. 1125, 1137-38 n.12 (D. Mass. 1982); *Landmark Sav. v. Rhoades*, 527 F. Supp. 206, 209 (E.D. Mich. 1981)). Generally, these courts imposed a stricter construction of RICO and more narrow interpretation of the legislative history.

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.²⁰¹ With the Supreme Court at times expanding²⁰² and at times limiting²⁰³ 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,²⁰⁴ and law enforcement offices can certainly constitute RICO enterprises.²⁰⁵ Legitimate organizations generally may serve as RICO enterprises in criminal actions pursuant to RICO.²⁰⁶ Further, as demonstrated in *Ruiz*, the entire enterprise (e.g., majority of officers at a site) need not be complicit in the racketeering activity to

201. See *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"); *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 *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 *Sedima*, the Supreme Court eliminated court-imposed limitations on civil RICO, thus "broaden[ing] the scope").

202. See *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).

203. See *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 *Reves* will limit criminal prosecution under RICO).

204. See *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); *United States v. Ambrose*, 740 F.2d 505, 512 (7th Cir. 1984) (finding the Chicago Police Department an appropriate RICO enterprise); *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); *Ruiz*, 905 F.2d at 503-04 (affirming conviction of police officer pursuant to criminal RICO for furthering drug trafficking). *But see 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).

205. See *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); *Davis*, 707 F.2d at 882-83 (holding that a county sheriff's office was a RICO "enterprise"); *Blackwood*, 768 F.2d at 137-38 (holding county circuit court constitutes an enterprise under RICO).

206. See *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 *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.²⁰⁷ 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.²⁰⁸ In the *Guerrero* civil suit, substantially more prevalent and severe misconduct²⁰⁹ 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.²¹⁰ 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.²¹¹ As the consent decree in Los Angeles demonstrates, local authorities appear, at times, incapable of rooting out police corruption and abuse.²¹² In fact, Los Angeles is not an isolated case. The Department of Justice has successfully negotiated consent decree oversight with three other police forces,²¹³ and continues to investigate apparent patterns of misconduct in several others.²¹⁴

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.²¹⁵ In addition to prosecutors' general disinclination to file charges against police officers,²¹⁶ some jurisdictions enact procedural roadblocks, further lessening the likelihood of indictments against police officers.²¹⁷ Georgia law, for example, provides special rights to police officers accused of misconduct on the job.²¹⁸ These privileges include right to counsel in grand jury proceedings and advanced notice of charges.²¹⁹ 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).

216. *See* Marshall Miller, *Police Brutality*, 17 YALE L. & POL'Y REV. 149, 153 (1998) (noting the scant resources prosecutors generally afford prosecutions against police and the reluctance of prosecutors to initiate such proceedings). Los Angeles, for example, saw only three federal prosecutions of police misconduct brought between 1981 and 1991. *See id.* at 154 (citing Laurie L. Levenson, *The Future of State and Federal Civil Rights Prosecutions: The Lessons of the Rodney King Trial*, 41 UCLA L. REV. 509, 537 (1994)).

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

218. *See* GA. CODE ANN. § 17-7-52 (1997 & Supp. 2000) (entitled, "Procedure for indictment of peace officer for crime in performance of duties; notification; rights of officer").

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.

Id. *See also* GA. CODE ANN. § 45-11-4 (1990 & Supp. 2000) (providing referenced grand jury protections).

III. INADEQUACIES OF SECTION 1983

Generations of legal commentators have sounded alarms over the ineffectiveness of civil remedies for police misconduct.²²⁰ The fact that successful civil suits against police officers were sparse six decades ago²²¹ is not surprising. However, the persistence of misconduct,²²² and the ineffectiveness of both criminal and civil law to stem the tide²²³ underscore the need for a new approach.

Section 1983²²⁴ is the most common means to redress police misconduct.²²⁵ However, the remedies it provides and the difficulties of section 1983 litigation, make it insufficient to tackle the problem.²²⁶ 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.²²⁷ 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 1871.²²⁸ Congress has

220. See Caleb Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 MINN. L. REV. 493 (1955) (noting, generally, that civil remedies have not been effective at addressing police misconduct); Jerome Hall, *The Law of Arrest in Relation to Contemporary Social Problems*, 3 U. CHI. L. REV. 345, 346-53 (1936) (explaining why civil liability for illegal arrests is illusive); Edward J. Littlejohn, *Civil Liability and the Police Officer: The Need for New Deterrents to Police Misconduct*, 58 U. DET. J. URB. L. 365, 369 (1981) (observing that the low likelihood of recovery is a disincentive for potential plaintiffs to file civil suits against police); Alison L. Patton, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 Is Ineffective in Deterring Police Brutality*, 44 HASTINGS L.J. 753, 755-67 (1993) (reviewing the difficulties of police misconduct suits pursuant to 42 U.S.C. § 1983); Miller, *supra* note 216, at 155 (discussing difficulty of prevailing in a § 1983 police misconduct suit and the ineffectiveness of civil damages to prompt reform).

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").

224. 42 U.S.C. § 1983 (1994 & Supp. IV 1998).

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 broadened²²⁹ and limited its scope.²³⁰ Despite many decades of use, however, the promise of section 1983 as a tool against police misconduct remains unfulfilled.²³¹ While this is not a Comment about section 1983, *per se*,²³² an examination of problems arising from section 1983 suits against police is necessary to understand the potential benefits of civil RICO.²³³

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

the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts . . .

Id.

The language of section 1983 closely mirrors this earlier Act: 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.

42 U.S.C. § 1983 (1994 & Supp. IV 1998).

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).

230. See Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 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).

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 *United States v. Ruiz*).

232. For excellent discussions of section 1983, its elements, and its inherent problems, see Myriam E. Gilles, *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, *Ganging Up On Police Brutality: Municipal Liability for the Unconstitutional Actions of Multiple Police Officers Under 42 U.S.C. § 1983*, 21 CARDOZO L. REV. 2087 (2000) (advancing for a slightly more optimistic examination of section 1983).

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. § 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 § 14141, see Miller, *supra* note 216.

234. See Patton, *supra* note 220, at 755-96 (discussing three primary obstacles facing plaintiffs).

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, § 4.5, at 4-9 (commenting that "unless the plaintiff has suffered substantial injuries" significant damages are unlikely), cited in Patton, *supra* note 220, at 755

considering the lack of means for the typical victim of abuse.²³⁶ Further, juries are typically heavily biased in favor of the police,²³⁷ and the “code of silence”²³⁸ creates another substantial stumbling block for plaintiffs.²³⁹ 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.²⁴⁰ Further, the standard of measuring the egregiousness of the alleged acts differs according to constitutional basis of the claim.²⁴¹

If the misconduct allegedly violates the Fourteenth Amendment, it is not enough for the officers to display deliberate indifference to fundamental rights.²⁴² Rather, only conduct that “shocks the conscience” is actionable in that instance.²⁴³ Section 1983 claims arising from other bases, such as the Eighth Amendment, may require a lesser burden for the plaintiff, such as deliberate indifference.²⁴⁴ 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 than 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, “[b]y 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 potential harm).

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.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.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.

B. *Municipal Liability Nearly Beyond Reach*

Under section 1983, it is nearly impossible to hold police departments or municipalities liable for constitutional violations²⁴⁷ 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.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.²⁴⁹

The United States Supreme Court greatly heightened this standard in *Bryan County Board of Commissioners v. Brown*.²⁵⁰ In *Bryan County*, the

precedent that prison officials violate the Eight Amendment when they show deliberate indifference to a prisoner’s health needs).

245. See *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’”).

246. See *Miller*, *supra* note 216, at 155 (discussing the availability of a good faith defense in section 1983 actions).

247. See Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 BUFF. 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).

248. See *City of Canton v. Harris*, 489 U.S. 378, 388-92 (1989) (establishing and discussing the deliberate indifference standard). In *Canton*, the plaintiff’s suit 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. *Canton*, 489 U.S. at 389-92. The trial court found for the plaintiff, and the verdict survived through the federal court of appeals. *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. *Id.*

249. See *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).

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 *Brown*, the plaintiff was injured when a county deputy pulled her from a vehicle following a police chase. *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. *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.”²⁵¹ 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.²⁵²

The possibility of municipal liability for injunctive relief under section 1983 was virtually eliminated with *Los Angeles v. Lyons*.²⁵³ In *Lyons*, the Supreme Court denied standing to a plaintiff challenging the common use of chokeholds by Los Angeles Police Department officers.²⁵⁴ 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,²⁵⁵ 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.²⁵⁶ 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.²⁵⁷

verdict withstood en banc hearing in the U.S. Court of Appeals for the Fifth Circuit. The U.S. Supreme Court, however vacated the judgment below and remanded, holding that liability can only attach if the sheriff consciously disregarded an obvious risk that hiring the deputy would result in an excessive use of force. *Board*, 520 U.S. at 399-400.

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).

253. 461 U.S. 95 (1983).

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”).

257. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985) (finding that, though Federal

Excessive use of force and other police misconduct claims, therefore, are likely governed by the forum's personal injury statute of limitations.²⁵⁸ 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.²⁵⁹

D. Section 1983 Insufficient

Simply put, section 1983 provides little hope of forcing systemic change upon police departments plagued with misconduct and abuse.²⁶⁰ Section 1983 jurisprudence creates a situation where, in most instances, neither the police department nor the individual officer is subject to liability.²⁶¹ 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,²⁶² 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").

261. See *id.* (explaining that *Monroe v. Pape*, 1 U.S. 167 (1966), effectively eliminated municipal liability under section 1983, while *Pierson v. Ray*, 386 U.S. 547 (1967), destroyed individual section 1983 liability in the police misconduct context).

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.²⁶³ Rather, the intent required for RICO purposes is only that necessary for committing the predicate acts themselves.²⁶⁴ This remains true even if the predicate acts are not specific intent crimes.²⁶⁵ To hold an officer who extorts a citizen as part of a racketeering pattern or practice²⁶⁶ 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,²⁶⁷ appears inapplicable to RICO.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.²⁶⁹ The limitations period begins running when the plaintiff discovers, or should have discovered, his injury.²⁷⁰

263. See 18 U.S.C. § 1962 (West 1994 & Supp. 2000) (providing the elements of a RICO violation).

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

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”).

266. See *supra* Part I.B.2 (discussing RICO pattern element).

267. See Jon O. Newman, *Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers’ Misconduct*, 87 *YALE L.J.* 447, 459-62 (1978) (discussing the section 1983 good faith defense).

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.

269. See *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 146-52 (1987) (concluding that, though state statutes of limitations are typically controlling where the federal and state laws are similar, where another federal law bears a closer resemblance, the federal statute of limitations will be controlling). See generally Ann K. Wooster, Annotation, *Statute of Limitations in Civil Actions for Damages under the Racketeer Influenced and Corrupt Organizations Act (RICO)*, 18 *U.S.C. §§ 1961-1968*, 156 *A.L.R. FED.* 361 (1999) (examining tolling and other issues in civil RICO statute of limitations jurisprudence).

270. See *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). *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. *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.²⁷¹ Absent equitable tolling, therefore, the majority of Guerrero's claims would have been time-barred if brought pursuant to California law.²⁷²

C. Damages: Triple Threat

The proviso for treble damages²⁷³ is perhaps the most powerful of all civil RICO provisions.²⁷⁴ Indeed, providing such substantial damages was a key means by which Congress intended to cripple RICO targets.²⁷⁵ In the course of the Rampart scandal, this provision could set Los Angeles' liability at as much as six-hundred million dollars.²⁷⁶

As civil damages are seen as a fundamental tool to force reform upon resistant police forces,²⁷⁷ 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,²⁷⁸ 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 fees²⁷⁹ 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 *City of Newport v. Fact Concerts, Inc.*,²⁸⁰ the U.S. Supreme Court insulated municipalities from punitive damages under section 1983.²⁸¹ Commenting that “considerations of history and policy do not support exposing a municipality to punitive damages for the bad-faith actions of its officials,”²⁸² the Court erected a prudential barrier that remains intact.²⁸³

Debate over the value and scope of this judgment persists,²⁸⁴ but the principle is well-established.²⁸⁵ In *City of Newport*,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.²⁸⁷ Additionally, the Court ruled that punitive damages against municipalities unfairly penalize taxpayers.²⁸⁸

Of course, civil RICO does not provide for punitive damages,²⁸⁹ and

279. See 18 U.S.C. § 1964(c) (1994 & 1999) (providing for recovery of “reasonable attorney’s fees” in Rico cases).

280. 453 U.S. 247 (1981).

281. See *City of Newport*, 453 U.S. at 271 (refusing to award punitive damages, absent compelling circumstances, against the municipality).

282. *Id.*

283. Recently, the U.S. Court of Appeals for the Second Circuit extended to cities almost complete immunity from section 1983 punitive damages claims. See *Ciraolo v. City of New York*, 216 F.3d 236, 242 (2d Cir.) (holding city immune from section 1983 punitive damage claim), *cert. denied*, 2000 WL 1376675 (U.S. Nov. 13, 2000).

284. See *Constitutional Law—Section 1983—Second Circuit Holds That Punitive Damages Are Unavailable Against Municipalities*: *Ciraolo v. City of New York*, 216 F.3d 236 (2d Cir. 2000), *Cert. Denied*, 2000 WL 1376675 (U.S. Nov. 13, 2000), 114 HARV. L. REV. 666 (2000) [hereinafter *Constitutional Law*] (discussing conflicting perspectives on the scope of municipal section 1983 immunity); Daryl Levinson, *Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs*, 67 U. CHI. L. REV. 345 (2000) (for a compelling economic analysis of constitutional torts applied to government actors and the internalization of damages among private and public entities).

285. See *Constitutional Law*, *supra* note 284, at 666 (explaining the state of the law regarding municipal punitive liability pursuant to section 1983).

286. Decided June 1981.

287. 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).

288. *Id.*

289. See *Liquid Air*, 834 F.2d at 1310 (holding civil RICO damages compensatory rather than punitive); see also *supra* note 183 (discussing compensatory nature of RICO treble damages provision).

does not allow suits against municipalities.²⁹⁰ However, its treble damages provision²⁹¹ exposes cities as indemnifiers of its police officers and thus to enormous civil liability.²⁹² The policy underpinnings for forbidding section 1983 punitive damages against municipalities,²⁹³ therefore, can logically extend to the civil RICO context.

Los Angeles' expected liability²⁹⁴ from the Rampart scandal already may impact city services and programs,²⁹⁵ 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.²⁹⁶ 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, 2000.²⁹⁷ In the first criminal trial stemming from

290. See *supra* note 153 and accompanying text (explaining why municipalities cannot be sued under RICO).

291. See 18 U.S.C. § 1964(c) (1994 & Supp. 2000) (providing, "[a]ny person injured . . . shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . . .").

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).

297. See *Judge throws out conviction of three officers in L.A. police scandal*, at <http://www.cnn.com/2000/LAW/12/23/lapd.corruption.ap/index.html> (Dec. 23, 2000) (reporting the reversal of the officers' convictions in the Rampart corruption scandal).

the Rampart scandal, the three were convicted in November based on allegations they conspired to frame suspects.²⁹⁸ 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 *The Master's Tools Will Never Dismantle the Master's House*,²⁹⁹ 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."³⁰⁰ 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.

298. 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).

299. *Supra* note 1.

300. *Id.* at 112.