

~ Getting Serious ~

by Denis O'Brien, PhD/Esq.

Sometimes the glib banter just doesn't cut it.

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Using RICO to Bring Down the Blue Wall of Silence



Unarmed teenager **Michael Brown** was dropped by a hail of bullets from officer **Darren Wilson**'s SigSauer in Ferguson, MO. [\[Link\]](#) Unarmed and mentally ill **Kelly Thomas** was beaten to death in Fullerton, CA by three rogue cops, one of whom told Thomas before beating him, "See these gloves? They're going to fuck you up." [\[Link\]](#) Unarmed **Eric Garner**, who was selling individual cigarettes, had his neck broken by NYPD cops on Staten Island. [\[Link\]](#) In Pennsylvania Officer **Lisa Mearkle** shot unarmed **David Kassick** in the back while he was lying face down, showing his empty hands. [\[Link\]](#) Officer **Michael Slager** shot unarmed **Walter Scott** in the back as Scott was running away in Charleston, SC. [\[Link\]](#) And, as we are currently reminded by the smoke still lingering over Baltimore, unarmed **Freddie Gray**'s vertebral column and voice box were crushed while he was in the custody of "Baltimore's finest," photos above.

I could go on and on, and, in fact, [Wikipedia](#) does go on and on with their lists of people killed by America's cops. They list 619 for 2014, 330 for 2013, and 63 for 2009. But such data are notoriously incomplete. The **Bureau of Justice Statistics** estimates the annual average of homicides by cops at between 930 and 1240 – and even those are low ball figures according to a recent analysis. [Link](#) For any moderately conscious and fair-minded person, all of these killings point to one question: What the fuck is going on?

Well, one thing that is going on has been going on forever, and that is plain ole' police brutality. I mean, one almost gets the sense that some of these cops beat and kill people, particularly black people, in order to claim their reward of a guaranteed vacation, euphemistically called "suspended with pay." But it is only now that we introverted white people who never go out at night are beginning to see how endemic police brutality really is, and the reason we're just beginning to see that is because of the **Big Brother Inversion**.

The Big Brother Inversion and a "few bad apples"

You might recall George Orwell's "**Nineteen Eighty-Four**" futuristic vision of a demonic, omnipresent Big Brother who watched everything that every citizen did. Given the Snowden revelations, we can now appreciate how prescient Orwell was, but one of the things he didn't foresee back in 1949 was iPhones. And GoPro's, and minos, and iPads, and countless other recording devices in the hands of virtually every person older than 12 and younger than 45, and he didn't see how all those recording devices would one day be

pointed at cops on the street, and riot cops, and airport screeners, and any government agent or employee who sticks his/her nose into a public place. Orwell didn't see dash cams on cop cars and HD video cameras embedded in laser guns. The Big Brother Inversion is an omnipresent citizens' army recording Big Brother's use of force, or demanding that Big Brother record itself and make those recordings available to the public. As a result of the BBI, the kind of police brutality that has been hidden for decades and decades is now being shown on national TV, sometimes as it happens.

One predictable side-show of the BBI and its outpouring and uploading of irrefutable video evidence of cop brutality is the mantra that arises from the police unions, police chiefs, and mayors all across the country, the mantra that "All cops aren't bad. It's only a few bad apples who are causing the problems." As long as the public buys into that line of crap the problems will go on and on, for all or most of America's cops *are* bad, and that's the point I want to make here: sound bites dividing cops into good cops and bad cops are a scam. It's a lot more complicated than that. A more accurate way to state the dichotomy is that there are perpetrators of police brutality and there are facilitators, and they are all a disgrace.

Cop unions, police administrators, and police spokes-people define "good cops" as the cops who aren't perpetrators, which is to say the cops who aren't the ones who actually shoot suspects in the back, beat them mercilessly, rape them with their batons, or kick them in the head. But that's not the proper definition of a good cop for it's way too broad. No, a good cop is one who will step in to prevent illegal brutality by other cops. A good cop is one who will blow the whistle on the bad cops, or, even better, bust them – cops who will enforce the law in other words, which is what they are all sworn to do. Cops who keep their mouths shut when they know exactly what is going on are not good cops; they are facilitators of bad cops, which makes them bad, too. That's why, in my opinion, virtually all cops are bad – they are all a part of the infamous and ubiquitous **Blue Wall of Silence** (BWS) that protects and facilitates the rogues who kill and beat and plant evidence all across America. Good cops according to my definition are rare because good cops don't stay cops for long. Ask **Frank Serpico**, who has spent virtually his entire life trying to make this point. [\[Link\]](#)

And it's not just the beat-cops. The BWS comprises cops at every level, and that includes the police chiefs and commissioners. In many places it includes the prosecutors. No one ever became a police chief or a police commissioner or spokesman or the head of a police union by blowing the whistle on their buddies. It's a pretty reasonable assumption, in my opinion, that the ones at the top are a part of the BWS because that is the only way they could have gotten to the top. You go along to get along.

Disappearing good cops: the Dorner effect

And that brings us to **Christopher Dorner**. Remember him? It's only been two years but it seems like decades. He was the guy who went nutters in LA after being fired from the **LAPD**. In February 2013 he killed four people in Orange County, sparking a massive manhunt. He then killed himself when the cops set fire to a cabin in which he was cornered in the San Bernardino Mountains near Big Bear. Prior to going off, Dorner was an outstanding person by all accounts: he had been an officer in the Navy Reserve; he served in the Iraq War; he graduated from Southern Utah where he was a running back; he was honest. [\[Source\]](#)

But Dorner as an LAPD rookie smacked right into the BWS. During his training with the LAPD he was paired with Officer (now Sergeant) **Teresa Evans**, and he filed a report against Evans, accusing her of kicking a man with schizophrenia and dementia in the face while he was handcuffed and lying on the ground. Even though the man, who received treatment for facial injuries, corroborated Dorner's accusations, the LAPD rallied around Evans. Dorner was taken off of street duty and ostracized, clothing in his locker was pissed on, one cop tried to hack his credit card account. The LAPD internal review board found

that there was not sufficient evidence to charge Evans, but then again the board was packed with Evans' buddies, including a former partner who was "very close" to her. Instead of busting Evans, they fired Dorner, which is what set him off. Since he killed himself, we will never know exactly how his whole busted whistle-blowing fiasco went down, but he was certainly made an example for other cops on the LAPD who might think about blowing the whistle on the brutal techniques used by their colleagues.

Regardless of the pressures they are under to stay behind the BWS, every cop who keeps his/her mouth shut about what is going on in America's streets is guilty of at least tacitly encouraging a system of police brutality that is out of hand. Were it not for them and their silence, that system and that brutality wouldn't exist and victims like Freddie Gray would likely still be alive. Consequently, in many communities there is a justified presumption that every cop is a liar, if for no other reason than for not speaking the truth when it matters. Crimes of omission are just as detrimental to society and just as condemnable as are crimes of commission. In this context it is fair to say that the country is full of police departments that are criminal enterprises that corrupt the judicial system by obstructing justice in myriad ways, like withholding evidence, destroying evidence, planting evidence, making false reports, giving false testimony, knowingly making false arrests, and intimidating witnesses. Much of this illicit activity is done to protect the perp-cops who shoot, beat, maim, and kill without cause or justification. And this brings us to **RICO**.

RICO and constabulary criminal enterprises

Seems to me that the RICO paradigm is perfect for bringing down the BWS. What is needed is an independent federal ombudsman's office dedicated to investigating charges of police brutality and recommending RICO charges, among others, where warranted. The federal **Racketeer Influenced and Corrupt Organizations Act** [[Title 18, §1961](#)] was originally written to help bring down the Mafia, and it has been extremely powerful in that role. I have just had dinner with an old Marine Corps buddy who has retired from the FBI. He worked the anti-Mafia gig on the East Coast for decades and told me with 100% conviction that the Mafia has been destroyed by RICO busts. Now the federal RICO Act should be fine tuned and aimed at thousands of mini-Mafias found in America's police departments. As it is currently written the RICO Act could be used to bring down the BWS, but it would be far more effective with a simple amendment. More on that amendment in a moment.

Initially, the idea of using a law aimed at criminal enterprises to bust bad cops sounds outrageous, if not goofy. But it's not. After all Georgia's RICO statute was just used to send a bunch of Atlanta school teachers and administrators to prison for years for fiddling with student test results. [[Link](#)] Admittedly, in that case the state judge, **Jerry Baxter**, was bouncing off the wall like a squash ball on meth, but the point remains: "racketeering" is now a legal term that is very broadly defined by prosecutors and judges alike. If teaching can be a racketeering enterprise, so can policing, and the courts have said as much.

In 2000 Los Angeles was in the middle of its worst police brutality and corruption disaster ever: the **Rampart Scandal**. Worse, even, than the **Rodney King** beating case. The LAPD, as anyone with an Internet connection surely knows, has always been a cess pool, which is a euphemism for "criminal enterprise," and when a number of lawsuits were filed against the LAPD under the federal RICO Act, US **Judge Wm. J. Rea** held that the LAPD could, indeed, be considered a criminal enterprise under RICO. [[Link](#)] That is a mind-boggling judicial conclusion, and I mean mind-boggling: cop-shops can now be considered as criminal enterprises in US federal court. It has long been said that there is a thin line between cops and crooks and here is a US federal court virtually writing that piece of street wisdom into the common law of the country.

Rea's decision was handed down in a case in which a man named **Louie Geurrero** was grabbed on the street by LAPD cops, pounded into the sidewalk, and arrested on false

narcotics charges. When he got out of prison Guerrero sued 231 defendants, including the cops, the mayor, the police chief, several prosecutors, and an “unknown Quirk,” whoever that is. Judge Rea held that Guerrero had a viable RICO case against the LAPD but a subsequent judge, **Gary A. Feess**, held that he did not. [\[Link\]](#) The problem that Judge Feess thought he saw was that RICO requires that the plaintiffs allege injury to business interests or property damage, and getting bloodied by rogue cops is neither. This is a distinct issue from whether a police organization can be considered a criminal enterprise. The **US 9th Circuit Court of Appeals** disagreed with Feess and held that getting beat up by cops adversely effects one’s ability to find and/or hold a job, which makes sense when you actually think about it. [\[Guerrero v. Gates, 442 F3d 697\]](#)

The 9th Circuit’s rule that cop-shops can be sued under RICO as criminal enterprises has never been reversed or over-ruled so far as I am aware, but the RICO Act needs some fine-tuning to make it more pertinent to constabulary racketeering. The RICO Act focuses on economic losses because it is based on the **Commerce Clause** of the Constitution, which allows Congress to make laws pertaining to interstate and foreign commerce. RICO needs to be broadened so that it also effectuates Congress’ power to pass laws protecting the Constitutional rights of individuals from criminal enterprises run by the states or their subdivisions. It needs to specifically include bodily injury and death as grounds for bringing a RICO law suit and RICO criminal charges. The 9th Circuit’s holding that bodily injury does, in fact, adversely affect one’s business interests is helpful, but the law should be amended to make bodily injury and death explicit RICO offenses irrespective of economic losses.

Bringing an end to the felonious sounds of silence

The most powerful aspect of RICO is the conspiracy provision. One need not actually be the person who extorts or murders or robs in order to get busted under RICO. It is enough merely to conspire in promoting a listed activity. Cops who fiddle with the evidence or make false reports or give false testimony to protect the actual perp-cops would expose themselves to long prison sentences and huge fines under RICO criminal and civil proceedings. I’m not certain, but perhaps a case for conspiracy could be made against see-no-evil-hear-no-evil-speak-no-evil cops who know of prohibited RICO activities and keep their mouths shut. Either way, self-preservation would be a strong incentive for cops to not just distance themselves from bad cops and illegal activities but to report such activities.

And that’s what’s needed to bring down the BWS: a strong motive for cops to do what is right, and avoiding a long stretch in a federal pen is generally considered a strong motive. Just ask ex-LAPD cop **Wm. Ferguson** who was sentenced by Judge Feess to a 102 year stretch in the federal pen for being a part of a group of cops who conducted multiple home invasions that were made to look like legitimate drug busts. [\[Link\]](#)

Just being a part of the BWS should be a crime under RICO and punishable by termination of employment, fines, and, in the most egregious cases, prison. There should be a federal ombudsman’s office that is responsible for receiving complaints of police brutality and making the initial investigation, which would include identifying those cops who obstruct justice by keeping their mouths shut when they know what happened. And the RICO Act should be amended to include death and bodily injury as grounds for prosecuting criminal enterprises, including cop-shops.

Congress can put an end to the beatings and killings by America’s cops if it wants to, all it needs is sufficient motivation. But only American voters – or, perhaps, enough rioters – can provide that motivation.