Report of the Illinois Special State's Attorney Relating to Police Brutality: A Legal Analysis of Federal Laws Implicated

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Summary

The report of an Illinois Special State's Attorney, appointed to investigate allegations of police brutality committed against certain detainees during the early 1980s, concluded that in three instances indictable aggravated battery, perjury, and obstruction of justice had occurred, but that the 3-year Illinois statute of limitations barred prosecution. Media accounts, however, have suggested the possibility of federal prosecution.

Statements found in the report implicate, at a minimum, federal statutes outlawing civil rights violations, perjury, false statements, obstructions of justice, conspiracy, and racketeering. In most instances, the 5-year federal statute of limitations is not likely to prove any more forgiving that the Illinois law. Federal law, however, does recognize a longer period of limitation for certain conspiracies and racketeering offenses.

Yet it is unclear whether either of the exceptions is available. Federal authorities have apparently examined the question on several occasions in the past and declined to proceed at least in part on the basis of the statute of limitations.

At this time, we anticipate no subsequent revisions of this report.

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Introduction

On July 19, 2006, Illinois Special State's Attorney Edward J. Egan and Chief Deputy Special State's Attorney Robert Boyle, named to investigate long standing charges of police brutality by a segment of the Chicago Police Department, released their report, *Report of the Special State's Attorney: Appointed and Ordered by the Presiding Judge of the Criminal Division of the Circuit Court of Cook County in No. 2001 Misc. 4 (Report)*.[1] The *Report*, the culmination of a 4-year investigation, concluded that criminal charges might have been brought in three cases of police misconduct, but in each instance were barred by the Illinois statute of limitations. Press accounts indicate, however, the Chief Deputy Special State's Attorney Boyle, the *Report*'s co-author, suggested that a prosecution under federal RICO and Hobbs Act statutes might encounter less severe statute of limitations obstacles.[2] This is a brief examination of the federal criminal statutes implicated by the *Report*.

The *Report* concluded:

> – In the case of Andrew Wilson, there exists proof beyond a reasonable doubt that the commanding officer of Area 2 and two other officers who interrogated Wilson committed aggravated battery, perjury and obstruction of justice in violation of Illinois law, but two of the officers are deceased and the Illinois 3 year statute of limitations bars prosecution the former commander of the Area 2 Violent Crime unit, *Report* at 63, 16.
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> – In the case of Phillip Adkins, there exists proof beyond a reasonable doubt that two other officers who interrogated Adkins committed aggravated battery in violation of Illinois law, but the Illinois statute of limitations bars prosecution, *Report* at 274, 16.
>
> – In the case of Alfonzo Pinex, there exists proof beyond a reasonable doubt that a second pair of officers who interrogated Pinex, committed aggravated battery, perjury and obstruction of justice in violation of Illinois law, but the Illinois statute of limitations bar prosecution, *Report* at 290, 16.

Andrew Wilson

Wilson was arrested at 5:15 on the morning of February 14, 1982, in connection with the investigation of the murder of two police officers, *Report* at 45. The arresting officers allegedly brutalized Wilson, beating him, burning him, subjecting him to electric shocks, and threatening him with a gun until he confessed, *Report* at 46-7. The commanding officer of the Area 2 Violent Crime Unit was purportedly present during much of the time and was said to have administered some of the mistreatment, *id*. At 10:00 in the evening, Wilson was taken to hospital after officers at the lock-up refused to take custody of him because of his condition.[3] After the escorting officers remarked that he would refuse treatment if he knew what was good for him, he "was examined at about 11:15 p.m. by Dr. Geoffrey Korn. Dr. Korn [later] testified that he made note of some 15 separate injuries that were apparent on the defendant's head, chest, and right leg. Two cuts on the defendant's forehead and one on the back of his head required stitches; the defendant's

[1] Linked on July 21, 2006 at http://www.suntimes.com/output/news/cst-nws-burge20.html.

[2] Pallasch & Esposito, *Suspects Tortured But It's Too Late for Charges*, CHICAGO SUN-TIMES (July 20, 2006). The story also indicates that attorneys for other alleged victims were highly critical of the *Report*'s other findings and conclusions.

[3] *People v. Wilson*, 116 Ill.2d 29, 36, 506 N.E.2d 571, 573 (1987).

right eye had been blackened, and there was bleeding on the surface of that eye. Dr. Korn also observed bruises on the defendant's chest and several linear abrasions or burns on the defendant's chest, shoulder, and chin area. Finally, Dr. Korn saw on the defendant's right thigh an abrasion from a second-degree burn; it was six inches long and 1 ½ to 2 inches wide."[4]

Wilson was subsequently convicted for the murder of the two officers and sentenced to death, but the Illinois Supreme Court overturned the conviction on appeal because the state had failed to demonstrate that Wilson's confession was not coerced.[5] He was retried, convicted a second time and sentenced to life imprisonment; his conviction and sentence were affirmed[6] and his federal habeas corpus petition denied.[7]

Wilson sued the three officers, the Superintendent of Police and the City under 42 U.S.C. 1983, based on allegations of his mistreatment, and ultimately settled with the City[8] after being awarded damages and attorney's fees at trial against the commanding officer.[9] The Office of Professional Standards investigation of the allegations of brutality led to the commanding officer's suspension in November 1991 and, following a Police Board hearing, his dismissal in 1992, *Report* at 153.

The commanding officer denied mistreating Wilson at the suppression hearing (November 9, 1982), in depositions relating to the civil litigation (1988, 1989), and at the hearing before the Police Board (which nevertheless found the three had tortured Wilson, fired the commander, and suspended the other two officers in 1992), *Report* at 28-29, 44, 49. He seems likely to have denied them to investigators during various Office of Professional Standards investigations, the last of which apparently occurred in November 1991, *Report* at 153, and during interviews with the Special State's Attorney's office sometime between 2001 and 2006, *Report* at 15.

Phillip Adkins

Adkins was arrested on June 7, 1984, in connection with an armed robbery during which a police officer was assaulted, *Report* at 266. Adkins asserts that on the way to the station police officers from Area 2 beat him to unconsciousness, *Report* at 267-69. He was hospitalized in the Intensive Care/Trauma Ward on June 8 and June 9 and discharged on June 10, *Report* at 271. Adkins successfully sued the officers and the City in federal court and the City settled for $25,000, *Report* at 267.[10] Thereafter, the Chicago Office of Professional Standards conducted an investigation (May 4, 1993 to December 16, 1993) that concluded that officers had in fact beaten Adkins, *Report* at 266.[11]

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[4] 116 Ill.2d at 36, 506 N.E.2d at 573-74.

[5] 116 Ill.2d at 41-2, 506 N.E.2d at 576.

[6] *People v. Wilson*, 254 Ill.App.3d 1020, 626 N.E.2d 1282 (1993).

[7] *United States ex rel. Wilson v. Peters*, 60 F.Supp.2d 777 (N.D. Ill. 1999).

[8] *Report* at 44.

[9] See *Wilson v. Chicago*, 120 F.3d 681, 683 (7th Cir. 1997); see also, *Wilson v. Chicago*, 684 F.Supp. 982 (N.D.Ill. 1988); *Wilson v. Chicago*, 707 F.Supp. 379 (N.D.Ill. 1989); *Wilson v. Chicago*, 710 F.Supp. 1168 (N.D.Ill. 1989); *Wilson v. Chicago*, 6 F.3d 1233 (7th Cir. 1993); *Wilson v. Chicago*, 900 F.Supp. 1015 (N.D.Ill. 1995).

[10] The suit was filed in 1986 and depositions taken in December, 1987, *Report* at 267.

[11] The Office had earlier initiated an investigation (November 7, 1984 to 1985) which it closed "based in part upon a lack of cooperation on the part of Adkins," *Report* at 266.

Alfonzo Pinex

Pinex was arrested on June 28, 1985, in connection with a murder charge, *Report* at 276. His statement while in custody was suppressed for failure to honor his *Miranda* rule rights, *Report* at 276-77. The court declined to address the question of whether the statement was the product of a beating, *Report* at 277. Charges against Pinex were dismissed and he sued alleging that two officers in Detective Area 2 had beaten him to secure his confession while he was in custody, *id*. The City settled for $5,000 on November 1, 1991, *id.*

Related Matters

The *Report* addresses several other instances where detainees complained that they were beaten by officers of Detective Area 2. In each instance, the *Report* concludes that there is a lack of creditable evidence sufficient to convict the officers in question, *Report* at 178, 182, 202, 240-41, 264.

The *Report* also considers the possibility of charges against those purported to have "covered up" the misconduct of others at Detective Area 2. It observes that, "We have found no evidence that would support a charge beyond a reasonable doubt of obstruction of justice (or 'cover-up') by any police personnel. There is insufficient evidence of wrongdoing by any member of the State's Attorneys Office, except for one person," *Report* at 17; see also, *Report* at 32-6; 112-29. The exception is apparently reserved for the prosecutor who ultimately took Wilson's recorded confession:

> If he was telling the truth when he testified about the sequence of events leading up to the court-reported confession of Andrew Wilson, . . . then the claim of Andrew Wilson that he had been abused before he gave that confession would be seriously undercut. If, on the other hand, [he] was not telling the truth, his false testimony would stand as strong corroboration of Andrew Wilson . . . He has testified on the motion to suppress and before the jury that convicted Wilson and sentenced him to death. He was named in the Federal civil rights action brought by Andrew Wilson. . . His deposition was taken, and he testified in both civil trials. He also testified as a witness on behalf of [the police commander] in the Police Board hearing in 1992. . . . In our judgment [he] did not tell the truth when he denied that he had been told by Andrew Wilson that he had been tortured by detectives, *Report* at 53-4.

The *Report* does not indicate that its authors would seek to indict and convict the prosecutor but for impediment of the statute of limitations, nor does it speak to the weight of any evidence that might support charges of perjury or obstruction of justice against the prosecutor.

Finally, the *Report* comments that, "the evidence supports the conclusion that [the] Superintendent [of Police] was guilty of a dereliction of duty and did not act in good faith in the investigation of the claim of Andrew Wilson," *Report* at 17. It makes no comment on the existence or weight of any evidence to support criminal charges.

Federal Laws Implicated

Although the purpose of the Special State's Attorney's inquiry was to determine whether prosecution under Illinois law might be had, statements contained in the *Report* suggest the possibility that several federal criminal laws may have been violated. The Fourth Amendment prohibits unreasonable searches and seizures; the Fifth Amendment prohibits compelling an

individual to incriminate himself; the Eighth Amendment prohibits cruel and unusual punishment;[12] each is binding upon the state and local officials by virtue of the due process clause Fourteenth Amendment.[13] In combination, they prohibit police from torturing and otherwise brutalizing those in custody either to elicit confessions or otherwise; to do so under color of law constitutes a federal crime, 18 U.S.C. 242.[14]

It is likewise a federal crime to use force, corruption, or deceit to prevent another from providing authorities with information concerning other federal offenses, 18 U.S.C. 1512;[15] or to directly provide a material false statement in a matter within the jurisdiction of a federal agency or department, 18 U.S.C. 1001;[16] or to lie under oath in federal proceedings, 18 U.S.C. 1621.[17] A fifth federal crime, the Hobbs Act, outlaws extortion under color of official right to the extent that the misconduct obstructs, delays or affects commerce, 18 U.S.C. 1951.[18]

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[12] U.S.Const. Amends. IV, V and VIII.

[13] *Mapp v. Ohio*, 367 U.S. 643 (1961)(Fourth Amendment); *Griffin v. California*, 380 U.S. 609 (1965)(Fifth Amendment self-incrimination clause); *Robinson v. California*, 370 U.S. 660 (1962)(Eighth Amendment cruel and unusual punishment clause).

[14] *Williams v. United States*, 341 U.S. 97, 100-104 (1951); *United States v. Price*, 383 U.S. 787, 793 (1966); *United States v. Christian*, 342 F.3d 744, 750-52 (7th Cir. 2003). Section 242 provides that, "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."

[15] 18 U.S.C. 1513 declares in relevant part, "(b) Whoever knowingly . . . engages in misleading conduct toward another person, with intent to—(1) influence, delay , or prevent the testimony of any person in an official proceedings . . . (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating tot he commission or possible commission of a federal offense. . . shall be fined under this title or imprisoned not more than ten years or both."

[16] 18 U.S.C. 1001(a) provides, "(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both."

[17] 18 U.S.C. 1621 provides in part, "Whoever—(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the Untied states authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true . . . is guilty of perjury and shall, expect as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years or both. . . ."

[18] The Hobbs Act declares in part, "(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by . . . extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both. (b) As used in this section . . .(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

Federal racketeering laws (RICO) proscribe operating a formal or informal enterprise, whose activities affect interstate commerce, through the patterned commission of other state or federal crimes (referred to interchangeably as racketeering activities or predicate offenses), 18 U.S.C. 1961-1963.[19]

Anyone who aids or abets the commission of a federal offense by another is liable himself for its commission and is equally punishable, 18 U.S.C. 2.[20] The same can be said of anyone who conspires with another to commit a federal offense or to obstruct federal governmental activities—conspirators are liable and punishable for any underlying offenses committed in furtherance of the conspiracy.[21] Conspiracy is a little different, however, in that it is also a separate crime, complete upon the criminal agreement and under the general conspiracy statute upon the commission of some overt act in furtherance of the scheme, 18 U.S.C. 371;[22] liability attaches regardless of whether the crime which is the object of scheme is ever committed, 18 U.S.C. 371.[23]

Absent some specific exception, federal crimes are subject to a general 5-year statute of limitations; an indictment or information initiating prosecution must be filed within 5 years of the commission of the offense, 18 U.S.C. 3282. In the case of crimes like conspiracy or RICO offenses that can extend over long periods of time, the statute of limitations begins to run with the last act committed in the name of the criminal enterprise and may be considered to continue to exist until abandoned or the object of the conspiracy has been achieved.[24]

Evidence that establishes that police officers committed aggravated battery upon Wilson, Adkins, and Pinex in violation of Illinois law would presumably be sufficient to support a civil rights conviction for violation of 18 U.S.C. 242.

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[19] 18 U.S.C. 1962(c) and (d) provide, "(c) 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. (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." An "enterprise" is defined to include any "legal entity, and any . . .group of individuals associated in fact although not a legal entity," 18 U.S.C. 1961(4). "'[R]acketeering activity' means (A) any act or threat involving murder, kidnaping, 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), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under the following provisions of title 18, United States Code . . . section 1512 (relating to tampering with a witness, victim, or an informant) . . . 1951 (relating to interference with commerce, robbery or extortion. . . . . 18 U.S.C. 1961(1)(A), (B).

[20] 18 U.S.C. 2(a) states, "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." See also, *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949)("In order to aid and abet another to commit a crime it is necessary that a defendant in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed").

[21] *Pinkerton v. United States*, 328 U.S. 640, 647-48 (1946).

[22] 18 U.S.C. 371 provides in part, "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. . . ." Various statutes outlaw conspiracy without requiring proof an overt act; the RICO provision (18 U.S.C. 1962(d)) quoted earlier is one such statute.

[23] *Salinas v. United States*, 522 U.S. 52, 65 (1997).

[24] *United States v. Saadey*, 393 F.3d 669, 677 (6th Cir. 2005).

Federal perjury charges cannot be predicated upon false statements made during Illinois judicial and administrative proceedings, but the same false statements may have been made under oath in connection with the federal civil rights suits brought by Wilson and Adkins. Statements that denied Wilson and Adkins were beaten while in police custody, if perjurious in Illinois proceedings, were likely perjurious in federal proceedings. Moreover, evidence of such false statements made to internal police and other state investigators concerning conduct that might constitute a federal civil rights violation could form the basis for a federal prosecution under either 18 U.S.C. 1001 (false statements on a matter within the jurisdiction of a federal department or agency)[25] or 18 U.S.C. 1512 (obstructing disclosure of a federal crime to federal authorities by deception of a potential witness).[26]

Until recently, it might have been possible to argue that the use of violence or the threat of violence by law enforcement authorities to coerce prisoners to relinquish their constitutional rights constituted prohibited extortion under the Hobbs Act and as a RICO predicate. The Supreme Court's decision in *Scheidler v. NOW*, seems to preclude such a construction. *Scheidler* held that Hobbs Act extortion does not include the use of violence or the threat of violence to "restrict another's freedom of action."[27] Moreover, *Scheidler* holds that the same definition of extortion applies the generic reference to state extortion laws in the RICO predicate list.[28]

[25] Section 1001 covers false statements made to FBI agents during the course of their investigations, *United States v. Grossman*, 272 F.Supp.2d 760, 763 (N.D.Ill. 2003); the section also covers statements relating to matters within the jurisdiction of a federal department or agency even if provided to state officers, *United States v. Salman*, 189 F.Supp.2d 360, 363-66 (E.D.Va. 2002)(false statements to local sheriff's deputies relating to access to prisoner being held for federal authorities); *United States v. White*, 270 F.3d 356, 363-64 (6th Cir. 2001)(false statement to state environmental agency in a matter within the federal Environmental Protection Agency's jurisdiction and relating to data collection funded by EPA).

[26] E.g., *United States v. Bailey*, 405 F.3d 102, 107-8 (1st Cir. 2005)(uphold the application of 18 U.S.C. 1512(b)(3) to a county correctional officer to attempted to justify "slapping" a prisoner around with a fabricated excuse to internal Sheriff's Department investigators with the observation that, "The government did not allege that the Sheriff's Department investigators were the federal 'law enforcement officers' to whom the statute refers; the government alleged that the investigators were the witnesses who ultimately relayed Bailey's misinformation to federal law enforcement officers. *See United States v. Baldyga*, 233 F.3d 674, 680 (1st Cir. 2000)(holding that the requirements of the statute are satisfied so long as the possibility exists that the defendant's misinformation will eventually be communicated to federal officials. That these witnesses were themselves county law enforcement personnel does not change the analysis"); *United States v. Veal*, 153 F.3d 1233, 1244-247 (11th Cir. 1998).

[27] *Scheidler v. NOW*, 537 U.S. 393, 400-409 (2002)(extortion as understood by section 1951's drafters involves the acquisition or deprivation of property and contrasts with coercion which is essentially extortion without this property element). The "extortion" claimed in *Scheidler* was the use of violence or the threat of violence directed against abortion clinics in order to force others "to give up property rights, namely a woman's right to seek medical services from a clinic, the right of doctors, nurses and other clinic staff to perform their jobs, and the right to clinics to provide medical services free from wrongful threats," 537 U.S. at 400-401.

[28] 537 U.S. at 410 ("where as here the Model Penal Code and a majority of the states recognize the crime of extortion as requiring a party to obtain or to seek to obtain property, as the Hobbs Act requires, the state extortion offense for purposes of RICO must have a similar requirement").

The Ninth Circuit appears to have recognized the general possibility of a RICO prosecution in cases involving charges of police misconduct.[29] The cases there, however, involved allegations of a wider range of predicate offenses, principally involved an issue critical in civil RICO cases but not relevant for purposes of a criminal RICO prosecution, and have yet to resolve the question of whether the requisite elements of a RICO have been satisfied. The cases, which grew out of the so-called "Ramparts Scandal," alleged that various officers had committed kidnaping, extortion, witness tampering, drug dealing, and attempted murder.[30] They focused primarily on the type of injuries for which a civil RICO plaintiff has standing to recover damages.[31]

As for the possibility of a RICO prosecution based on crimes implicated here, civil rights violations of 18 U.S.C. 242 are not RICO predicate offenses, 18 U.S.C. 1961(1); neither are violations of 18 U.S.C. 1001 (false statements), of 18 U.S.C. 1621 (perjury), nor of 18 U.S.C. 371 (conspiracy), 18 U.S.C. 1961(1).[32] Violations of 18 U.S.C. 1512, however, are RICO predicate offenses, 18 U.S.C. 1961(1)(B). In order to establish a RICO violation in this context, the government would have to prove that the commander and/or various officers of Area 2 conducted the activities of an enterprising affecting interstate commerce (either the Area 2 violent crime section or the informal association of the officers dedicated to the use of brutality to punish and obtain coerced confessions from some of those in their custody) through the patterned commission of violations of 18 U.S.C. 1512(b)(3) (i.e., denials and fabrication to investigators pursuing allegations of such brutality).

But at least in part, the problem may be one of time. The Constitution's ex post facto clauses, U.S.Const. Art.I, §9, cl.3 and Art.I, §10, cl.1, prohibit the retroactive application of either federal or state criminal laws.[33] Section 1512 was enacted and became effective on October 12, 1982;[34] it cannot be applied to misconduct occurring prior to that date. Section 1512 became a RICO predicate offense on November 10, 1986;[35] a RICO prosecution cannot be grounded on section 1512 predicate offenses occurring prior to that date. The three cases the *Report* found prosecutable (but for the statute of limitations) at best involve conduct straddling November 10, 1986. The denials of mistreatment to state investigators, at state proceedings, or during depositions, which provide the gravamen under section 1512 (preventing disclosure to federal authorities by deceiving those who would otherwise report the commission of a federal offense), begin with Wilson's suppression hearing on November 9, 1982, and end possibly with denials at interviews conducted by the *Report*'s authors, *Report* at 26, 7, 14.

The date section 1512 was added as a RICO predicate, November 10, 1986, provides a beginning line; no prior violation of section 1512 may be used as a RICO predicate offense. There may also be a question as to the end line. It is not at all clear that section 1512(b)(3) covers situations

[29] E.g., *Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005); *Guerrero v. Gates*, 110 F.Supp.2d 1287 (C.D.Cal. 2000).

[30] *Diaz v. Gates*, 354 F.3d 1169, 1170 (9th Cir. 2004)(allegations of kidnaping and witness tampering); *Guerrero v. Gates*, 110 F.Supp.2d 1287, (C.D.Cal. 2000)(allegations of attempted murder, extortion, narcotics dealing and witness tampering).

[31] The Ninth Circuit ultimately held that personal injuries such as false imprisonment that caused the plaintiff to lose his job constituted an injury to his "business or property" for purposes of civil RICO, *Diaz v. Gates*, 420 F.3d 897, 898-902 (9th Cir. 2005).

[32] Conspiracy to violate the RICO provisions, however, is a separate offense, 18 U.S.C. 1962(d).

[33] *Stogner v. California*, 539 U.S. 607, 610 (2003).

[34] P.L. 97-291, 96 Stat. 1249 (1982).

[35] P.L. 99-646, 100 Stat. 3506 (1986)

where deceit is used to prevent disclosure of information to federal authorities concerning federal crimes for which the statute of limitations has expired. Thus, it may be that no violations of section 1512(b)(3) occurred with respect to denials made more than five years after the alleged civil rights violations on February 14, 1982 (Wilson), June 7, 1984 (Adkins), or June 28, 1985 (Pinex). On the other hand, here we have alleged civil rights violations followed by a series of denials themselves purportedly constituting violations of federal perjury and false statement statutes. A court might conclude that the end line should be marked at five years after the penultimate instance of perjury or a false statement, concealed within a more recent denial upon which a section 1512 charge may be based. In the context of the Wilson case, for example, section 1512 may permit the prosecution of any denial occurring within five years of false statements made concerning the 1982 civil rights violation during testimony at the 1992 Police Board hearing.

Then there is the question of pattern. A RICO prosecution requires the government to establish not only qualified predicate offenses but to prove that they were committed as part of a pattern. The Supreme Court has explained that a "person cannot be subjected to [RICO] sanctions simply for committing two widely separate and isolated criminal offenses. Instead, the term 'pattern' itself requires the showing of a relationship between the predicates and of the threat of continuing activity. It is this factor of *continuity plus relationship* which combines to produce a pattern."[36] "[P]redicate acts are related if they have 'the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'"[37] RICO continuity comes in two forms, a series of predicate offenses that has ended (closed ended) and a series of predicate offenses that is continuing or bears the threat of continuation (open ended). The government "can satisfy the continuity prong either by (1) demonstrating a close-ended series of conduct that existed for such an extended period time that a threat of future harm is implicit, or (2) an open-ended series of conduct that, while short-lived, shows clear signs of threatening to continue into the future."[38]

The *Report* highlights three cases, each arising at least a year apart from the others, and involving three different sets of officers. Nevertheless, each is an instance where officers of Area 2 under the same commanding officer are alleged to have brutalized detainees in police custody, regularly denied wrongdoing, and offered explanations that the *Report* does not find creditable. Of course, the civil rights violations are not the alleged RICO predicates. The RICO predicates are instead the alleged violations of section 1512 in the form of denials and fabrications to investigators, and in state proceedings and federal depositions. More numerous than the underlying civil rights violations, they benefit and suffer from the same relationship analysis. They are relatively isolated instances involving different officers, but arising out of the same environment, reflecting common means and purpose.

Even if a court should find the cases sufficiently related for RICO purposes, the question of continuity may still prove troubling. The actionable obstructions appear to run from the depositions taken in Adkins' civil case in 1987 to the depositions in Wilson's civil litigation in 1988 and 1989, and include statements in Pinex's civil litigation in 1991, testimony in the Wilson Police Board hearing in 1992, and possibly statements to investigators in the Office of

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[36] *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989)(emphasis of the Court).

[37] *Roger Whitmore's Auto v. Lake County*, 424 F.3d 659, 672 (7th Cir. 2005), quoting, *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. at 240.

[38] *Roger Whitmore's Auto v. Lake County*, 424 F.3d at 673.

Professional Standards' Adkins investigation that ended in December 16, 1993. The duration of the activity would seem sufficient, but the comparatively few instances, relatively isolated in time and circumstance, may bring into question whether the events can accurate be seen as the evidence of the continuous existence of a single enterprise.

Statute of Limitations

As noted earlier, federal crimes are generally subject to a 5-year statute of limitations, 18 U.S.C. 3282. The civil rights violations of which the *Report* speaks occurred in 1982, 1984 and 1985. The *Report* indicates that with the exception of its own interviews (for which it provides no dates) the denials and alleged fabrications upon which any other criminal charges would have been grounded occurred not later December 16, 1993, the date upon which the last mentioned Office of Professional Standards investigation ended, *Report* at 266. The *Report* argues that the Illinois statute of limitations precludes state prosecution, *Report* at 16.

While citing the earlier conclusions of federal authorities, media accounts at the time the *Report* was released quoted one of its authors as suggesting that RICO and the longer federal statute of limitation might hold the prospect of future federal prosecution. This would seem to build upon a theory that the officers alleged to have committed the three civil rights violations in the 1980s were part of a conspiracy or RICO enterprise that encompassed not only the beating of detainees but an agreement to perpetually conceal the activity.[39]

As a general rule, the statute of limitations begins to run with the commission of the most recent overt act for conspiracies in violation of a statute which requires the government to prove both criminal agreement and some overt act in furtherance of scheme.[40] In the case of statutes like RICO whose conspiracy proscription carries no overt act requirement, the scheme is said to continue until all its objectives have been realized or it is abandoned.[41]

In *Grunewald v. United States*, 353 U.S. 391 (1957), the question arose in whether in the case of an overt act conspiracy, the statute of limitations may be extended when the conspirators or one of their number acts to conceal the past workings of the scheme. The defendants in *Grunewald* had conspired to fix tax prosecutions and had doctored government records to conceal their misconduct, 353 U.S. at 395. When a grand jury was convened after the statute of limitations on the "tax fix" had run, the conspirators denied wrongdoing and urged other witnesses not to

[39] The *Report* notes that some of those who claimed to have been the victims of police abuse articulated a comparable theory: "1) All the police officers at Areas 2 and 3 . . . who have been accused by any of the claimants, had engaged in a single conspiracy even before the arrest of the claimants to extract confessions from the claimants by force if necessary and at the same time; 2) conspire to obstruct justice and to commit perjury by testifying falsely at the trials of the claimants; and 3) at any possible future proceedings such as those involving post-conviction petitions or federal habeas corpus hearings. 4) A conspiracy to obstruct justice and to commit perjury may be barred by the statute of limitations, but a subsequent overt act will resuscitate it. 5) the original conspiracy to commit armed violence in each case is part of a continuing conspiracy that still exists. 6) It is conceded that the evidence to support a finding of a general conspiracy is all circumstantial," *Report* at 21.

[40] *United States v. Qayyum*, 451 F.3d 1214, 1218 (10th Cir. 2006); *United States v. Salmonese*, 352 F.3d 608, 614 (2d Cir. 2003); *United States v. Smith*, 197 F.3d 225, 228 (6th Cir. 1999); *United States v. Yashar*, 166 F.3d 873, 876j (7th Cir. 1999).

[41] *United States v. Magleby*, 420 F.3d 1136, 1145 (10th Cir. 2005); *United States v. Saadley*, 393 F.3d 669, 677 (6th Cir. 2005); *United States v. Spero*, 331 F.3d 57, 61-2 (2d Cir. 2003).

cooperate, 353 U.S. at 396.[42] The prosecution argued that the conspiracy included a concealment component that meant the plot continued in place even after its principal objective, the tax fix, had been accomplished.[43]

The Court was unpersuaded, "[w]e find in all this noting more than what was involved [in our earlier cases], that is: (1) a criminal conspiracy which is carried out in secrecy; (2) a continuation of the secrecy after the accomplishment of the crime; and (3) desperate attempts to cover up after the crime begins to come to light; and so we cannot agree that this case does not fall within the ban of those prior opinions," 353 U.S. at 403. But then the Court went on the explain that "[b]y no means does this mean that acts of concealment can never have significance in furthering a criminal conspiracy. But a vital distinction must be made between acts of concealment done in furtherance of the *main* criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime." 353 U.S. at 405 (emphasis in the original).

Subsequent lower court decisions reflect the view that an overt act of concealment will toll the statute of limitations or evidence its continued existence if the indictment charges that concealment was of the main object of the conspiracy. The *Report* cites two reported federal appellate court cases as examples, *United States v. Masters*, 924 F.2d 1362 (7th Cir. 1991), and *United States v. Maloney*, 71 F.3d 645 (7th Cir. 1995). *Masters* involved an attorney, a chief of police who until he lost his job took kickbacks for referring clients to the attorney, and a sheriff's department lieutenant who accepted bribes from the attorney to protect bookies from police interference, 924 F.2d at 1365. The three also participated in a plot to murder the attorney's wayward wife, 924 F.2d at 1365-366. The three were convicted under federal RICO charges predicated on the corruption offenses, 924 F.2d at 1365. The chief of police was charged and convicted only with conspiracy because the statute of limitations on the substantive corruption charges had run between the time he lost his job and the time the indictment was returned, *id*.

The appellate court rejected the chief's statute of limitations challenge with the observation that "[t]he conspirators in this case, signally including [the chief], intended from the first to exert strenuous efforts to prevent discovery of the crime and of their involvement in it; the fact that two of the three conspirators were policemen supports the inference that concealment was part of the original conspiracy and not a spontaneous reaction to fear of arrest and prosecution. It was also a fair inference that the defendants agreed to keep trying to conceal the conspiracy for as long as they could, using their official positions where possible," 924 F.2d at 1368.[44]

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[42] See also the more extensive description of the facts in lower court opinion, *United States v. Grunewald*, 233 F.2d 556 (2d Cir. 1956).

[43] The government "urges that even if the main object of the conspiracy was to obtain decisions from the Bureau of Internal Revenue not to institute criminal tax prosecutions... the indictments alleged, and the proofs showed, that the conspiracy also included as a subsidiary element an agreement to conceal the conspiracy to 'fix' these tax cases, to the end that the conspirators would escape detection and punishment for the crime. Says the government, 'from the very nature of the conspiracy . . . there had to be, and was, from the outset a conscious, deliberate, agreement to conceal . . . each and every aspect of the conspiracy . . .' It is then agreed that since the alleged conspiracy to conceal clearly continued long after the main criminal purpose of the conspiracy was accomplished, and since overt acts in furtherance of the agreement to conceal were performed well within the indictment period, the prosecution was timely," 353 U.S. at 398.

[44] It is not clear why much the same could not have been said about the *Grunewald* defendants, except that in *Masters* concealment was a component of the scheme, "Among the elements of the conspiracy with which [the chief] was charged was that he had agreed with the other two defendants to conceal their actions . . . and . . . to participate in such concealment indefinitely," 924 F.2d at 1368.

Maloney involved a judge who accepted bribes to "fix" four criminal cases and then sought to make sure that the middle man through whom the bribes were funneled continued to "stand tall" in the face of criminal investigations into allegations of corruption, *United States v. Maloney*, 71 F.3d 645, 650-52 (7th Cir. 1995). The statute of limitations had run on each of the bribery cases by the time indictments were returned, but the judge was charged with and convicted of a RICO conspiracy based upon the obstruction of justice predicates, 71 F.3d at 649. The judge objected that the statute of limitations barred prosecution for a conspiracy to conceal the commission of time-barred offenses, but the appellate court responded that, "[u]nlike *Grunewald*, however, the conspiracy's main criminal objective was never 'finally attained' in this case. . . . In the instance case, the main criminal objective, to fix cases whenever feasible, was neither accomplished nor abandoned as long as Judge Maloney remained on the bench . . . Concealment, therefore, was an overt act in furtherance of the conspiracy's main objectives. . . Maloney's statements . . . helped to preserve his position on the bench—the essential ingredient in the conspiracy's ability to fix cases. . . Thus, *Grunewald* does not exclude the obstruction of justice acts from the RICO conspiracy for statute of limitations purposes" 71 F.3d at 659-60.[45]

Cases from other circuits reflect the same view: *Grunewald* does not bar extension of the statute of limitations to include acts of concealment where concealment falls within the scope of the conspiracy; *Grunewald* only applies where the conspiracy's objectives have been attained and concealment follows.[46]

If federal prosecutors could establish either a conspiracy in which concealment was an initial object of the plot or a RICO violation or conspiracy, the specter of a statute of limitations bar would disappear. Otherwise the statute of limitations would appear to preclude federal prosecution on the basis of any misconduct identified in the *Report*.

Other than its own interviews, the last of the events in question took place no later than December 16, 1993, *Report* at 266. The Special State's Attorney's investigation described in the *Report* began in 2001 and ended July 19, 2006. The commanding officers and each of the individual officers whom the *Report* describes as indictable were interviewed, *Report* at 16, 274, 290, 15. The interview statements were apparently consistent with the officers' earlier statements, for the *Report* would certainly have noted any incriminating statements. If the interview statements were false and material, they would constitute violations of 18 U.S.C. 1001 and 1512(b) (3); but if the statute of limitations bars the prosecution of the offenses to which the statements relate, they are not material consequently no violation.

The *Report* suggests that dispelling statute of limitation difficulties, however, may be challenging, for on several occasions federal authorities have concluded that the passage of time bars federal prosecution:

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[45] Thus, the principal difference between *Grunewald* and *Maloney* is that the *Grunewald* indictment consisted of separate conspiracy and concealment charges. The *Maloney* indictment merged them together in a RICO charge.

[46] *United States v. Qayyum*, 451 F.3d 1214, 1219-220 (10th Cir. 2006)(emphasis in the original)("Given the grand jury's express description of the conspiracy's purpose and object, the alleged false statements to government agents formed part of the [charged] conspiracy because they did not *follow* the accomplishment of its central criminal objectives but rather were acts in *furtherance* of those aims"); *United States v. Rabinowitz*, 56 F.3d 932, 934 (8th Cir. 1995)("When concealment is necessary to accomplish a crime successfully, acts of concealment are properly considered to be within the conspiracy").

> On October 3, 1990 . . . the Task Force to Confront Police Violence wrote to . . . the United States Attorney, pointing out that [it] had previously submitted information regarding incidents of torture committed by the detectives at Detective Area 2 . . . the response form the United States Attorney's Office was that the incidents had occurred more than five years before. . . On March 15, 1991, Assistant Public Defender Joseph M. Grump wrote to [the Attorney General], also referring to . . . the case of Andrew Wilson. Mr. Gump identified over 25 cases involving persons who claimed to have been abused. . . it was determined that prosecution would be declined because of the statute of limitations. The matter was reopened by the Department of Justice, and on May 18, 1993, prosecution was again declined because of the statute of limitations.
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> Shortly after we were appointed, we were informed that persons . . . seeking prosecution of police officers met with [the] Attorney General. . . .We have received a report that the investigation . . . by the Civil Rights Section of the Justice Department was closed as of December 2001 because of the statute of limitations. *Report* at 30-1, 30.

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