
DRUG DEALING AND STREET GANGS— THE NEW NUISANCES: MODERNIZING OLD THEORIES AND BRINGING NEIGHBORS TOGETHER IN THE WAR AGAINST CRIME

I. INTRODUCTION

A child learns his numbers by counting the gunshots that echo in his neighborhood.¹ The sound of breaking glass keeps one woman awake at night;² another is afraid to walk down her street to buy a loaf of bread during the day.³ A girl playing on her front lawn is continuously harassed by drug dealers and drug customers.⁴ A teenager is held up at

1. *Lew v. Superior Court*, 25 Cal. Rptr. 2d 42, 44 (Cal. Ct. App. 1993). See *infra* notes 76-90 and accompanying text (discussing the *Lew* case).

2. Janet Wells, *Berkeley Neighbors Oust Criminals*, S.F. CHRON., Dec. 20, 1993, at A19.

3. Maitland Zane, *Judgment Against Owner of Crime-Ridden Building*, S.F. CHRON., Mar. 21, 1995, at A18 (quoting plaintiff in recent small claims case whose community had become violent due to neighboring nuisance property). See also Judy Pasternak, *Wave Of Fear: America's Soaring Concern Over Crime*, L.A. TIMES, Oct. 21, 1994, at A1 (reporting on increased community fear as crime rates rise in St. Louis and other cities); Timothy Williams, *Valley Crime Fell Last Year, But Residents' Fears Soared*, L.A. TIMES, Jan. 1, 1994, at A1 (“[F]ears about random and rampant violence were fueled [in 1993] by a series of cold-blooded and arbitrary killings. . . .”).

4. Jackie Boor, *Forum: When the Neighbors Fight Back*, SACRAMENTO BEE, Jan. 9, 1994, at F1 (describing the experiences of residents in a formerly safe Sacramento neighborhood). For a discussion of the relationship between gang-related activity and community violence, see Roger Chesley, *Block By Block: Gangs Pervade Community—Violence Plagues Southwest Detroit*, DETROIT FREE PRESS, Mar. 1, 1994, at 1B (reporting increased violence due to drug trade and gang activity in Southwest Detroit).

gun point while walking to the bus stop.⁵ A man spends \$2,000 to put up a six-foot concrete wall to prevent bullets from flying through the walls of his house.⁶ Another man walks down his driveway to pick up the newspaper in the morning, only to find that the body of yet another drug overdose victim has been dumped onto his sidewalk.⁷

Street crime statistics in American cities continue to rise.⁸ The number of our nation's youths involved in street gangs and drug dealing is especially alarming.⁹ As crime rates increase across the country, the police are becoming less able to respond appropriately to the needs of all citizens.¹⁰ Many residents in communities that were at one time

But see Ken Ellingwood, *County Gang Crime—By The Numbers*, L.A. TIMES, Sept. 13, 1994, at B1 (noting a county-wide survey of gang incidents showing gang crime is not centered on drug-related activity).

5. Daryl Strickland, *Oakland Fights Back in Small Claims Court*, SEATTLE TIMES, Dec. 25, 1994, at B2. The fourteen-year-old boy was the son of Molly Wetzel, a single mother of two. *Id.* After the incident, Wetzel decided to found the "Safe Streets Now" program in her neighborhood. *Id.* The program has since gained national recognition. *Id.* See, e.g., Gus diZerega, *Closing Down Drug Houses*, WICHITA EAGLE, Sept. 25, 1994, at 16A.

See *infra* note 15 for a discussion of the progress, success, and expansion of the "Safe Streets Now" program.

6. See Louis Sahagun, *Church to Confront Drug Dealers' Cocaine*, L.A. TIMES, Jan. 22, 1991, at 1 (describing the efforts of church leaders and other community residents to close down neighboring drug houses and fight the increasing violence in their neighborhood).

7. See *Oscar v. University Students Co-op. Ass'n*, 965 F.2d 783, 784 (9th Cir.), cert. denied, 506 U.S. 1020 (1992). See *infra* notes 110-20 and accompanying text for a full discussion of this case and its implications.

8. See, e.g., John McCormick & Bill Turque, *Big Crimes, Small Cities*, NEWSWEEK, June 10, 1991, at 16 (reporting increase in violent crimes in cities with populations of 500,000 to 1 million in 1990). Drive-by shootings and other types of random violence are becoming more prevalent; Judith Gaines, *Shots at Houses Hit Neighborhood's Gut*, BOSTON GLOBE, Dec. 12, 1990 at 36 (reporting nine drive-by shootings in Manchester, New Hampshire which have not injured anyone but have increased fear in the neighborhood); Sonyrea Tate & Michael Cromwell, *Drive-by Shooting Wounds Five Pupils*, WASH. TIMES, Dec. 21, 1990, at A1 (reporting five children injured in a drive-by shooting on their way home from school).

9. See, e.g., Deborah Barfield, *Medium-Size Cities are Also Struggling with Youth Violence as in the Case of Large Cities*, PHIL. INQ., Feb. 12, 1994, at D88 ("Youth violence—some call it an epidemic—is no longer just a big-city problem.").

10. See diZerega, *supra* note 5, at 16A (noting the average police department spends approximately \$15,000 and one year to close down a single drug house); Monte R. Young & Michael Slackman, *Cracks in the Laws: Officials Say They Lack Tools to Shut Drug Dens for Good*, NEWSDAY, May 6, 1990, at 5. Ineffective laws prevent police from

considered safe are now overcome by fear each time they leave their doorsteps.¹¹ Families who once lived peacefully in quiet communities have become hostages in their own homes, terrified of their own neighbors.¹² However, many Americans have tired of being victimized and are no longer willing to wait for criminals to come to them.¹³ Increasingly, citizens are joining together to fight crime in their communities and cities.¹⁴ Residents and tenants alike are beginning to

permanently shutting crack houses. *Id.* The presence of a crack house reduces the quality of life for the surrounding neighborhood because a "constant parade of users and dealers marching in and out of the front door brings with it increased burglaries, robberies, prostitution, traffic, noise and litter." *Id.*

11. See *supra* notes 1-7 and accompanying text.

12. See, e.g., Boor, *supra* note 4, at F1 (recounting the story of a small, peaceful neighborhood transformed into a haven for criminals when clientele of a neighboring motel deteriorated); Wells, *supra* note 2, at A19 (telling a similar story about a neighborhood in Berkeley).

13. See Pasternak, *supra* note 3, at A1. Betsy Cantrell, crime prevention director of the National Sheriffs Association, bluntly stated "We can't expect law enforcement to protect us all." *Id.* Denise Bailey, a founder of Neighborhood Watch in St. Louis, stated that she began the program in 1992 because she wanted her children to be able to play outside. *Id.* Convinced "the police couldn't, or wouldn't help," she concluded that the community would have to do the job, rather than stand idly by and watch crime destroy the neighborhood. *Id.*

14. See, e.g., Pasternak, *supra* note 3. Unfortunately, programs such as Neighborhood Watch may often increase fear while having little effect on crime. *Id.* (citing study finding that Neighborhood Watch had no impact on crime in Chicago neighborhoods). Without the help of police, members of these programs, accused of "snitching," become easy targets for criminals. *Id.* (describing attacks against resident organizers in a St. Louis neighborhood). For this reason as well as others, Bonnie Bucqueroux, associate director of the National Center for Community Policing at Michigan State University, noted that "Neighborhood Watch is kind of passé." *Id.*

Nevertheless, across the country, community involvement to combat crime is on the rise. See also Melinda Beck et al., *Video Vigilantes*, NEWSWEEK, July 22, 1991, at 42, 44 (discussing recent use of video cameras to apprehend criminals or to publicize criminal activities); Phil Borchmann, *Mothers Join Alliance to Stop Crime*, CHI. TRIB., May 18, 1994, at 3 (Citizens Alliance organizes projects to fight gangs and drugs); Robert D. Davila, *Neighborhood Association Reveals Secrets of Its Success*, SACRAMENTO BEE, Oct. 13, 1994, at B3 (local group conducts seminars at McGeorge Law School to educate residents on fighting nuisances and crime); Jake Doherty, *Westlake Crusade for Street Racks Up Victories*, L.A. TIMES, May 8, 1994, at 8 (community volunteers organize meetings for residents and interact with city officials to help fight crime in their area); Duke Helfand, *They're Cleaning Up in Court: Neighbors Sue Landlords to Get Rid of Drug Dealers and Troublemakers*, L.A. TIMES, Mar. 3, 1994, at 8 (resident leads crusade to fight nuisance properties in her neighborhood); Deborah Sullivan, *Taking Control of the Streets*, L.A. TIMES, Jan. 12, 1995, at J10 (residents form quasi-governmental town councils resulting in a 30% drop in serious crime in the area). A new book offers advice

take action against their neighbors and landlords to free their neighborhoods of drugs, gangs, and other types of violence.¹⁵

This Note explores various theories under which a property owner may sue a neighbor when criminal activity is taking place on the neighbor's premises. The Note strongly supports community involvement, and focuses on what communities in Missouri may do to fight the owners of properties known to be the sites of illegal drug transactions or street gang activity.

Part II outlines the common law of nuisance and the possibilities of suing landowners under a public or private nuisance theory. Part III discusses the extension of landlord-tenant law to create a duty to protect tenants from foreseeable violence and crime. Part III also examines the extension of this duty to the neighbors of an owner's property. Most plaintiffs who sue neighbors for criminal activity occurring on their neighbors' property apply either a nuisance or extended-duty theory, or both.¹⁶ Part IV discusses an unsuccessful effort to sue the owners of a

to community residents seeking to organize their neighborhoods in an effort to decrease crime. Focusing on organization and education, the book teaches how to start a neighborhood crime prevention group, including information on holding neighborhood meetings, running groups smoothly, and improving home security. STEPHANIE MANN & M.C. BLAKEMAN, *SAFE HOMES, SAFE NEIGHBORHOODS; STOPPING CRIME WHERE YOU LIVE* (Marcia Steward & Ralph Warner eds., 1993).

15. See *supra* note 14. An especially successful national organization for fighting crime has been the "Safe Streets Now" (SSN) program, founded in Oakland, California in 1989. The program targets nuisance property, bringing neighbors together to document all criminal activity, warn the landowners, and if need be, sue the landowners in small claims court. See diZerega, *supra* note 5, at 16A (recounting the SSN's history). See also Rick DelVecchio, *Making Oakland Safe: Neighbors Fight Drugs and Win*, S.F. CHRON., Jan. 25, 1993, at A1 (citing increased property values in SSN birthplace); Rick DelVecchio, *Oakland Gets Novel Anti-Drug Program: Do-It-Yourself Training for Citizens is the Key*, S.F. CHRON., Nov. 19, 1993, at A21 (reporting Wetzel's claim that SSN eliminated 285 drug outlets since 1989); Bill Hart, *Neighbors Turn to Courts to Fight Crime*, PHOENIX GAZETTE, Apr. 17, 1994, at G1 (noting Phoenix, Arizona official's interest in SSN model); John J. Monahan, *Citizens Learn Tactics to Fight Drugs, Crime*, TELEGRAM & GAZETTE (Worcester, MA), Mar. 16, 1994, at B1 (discussing SSN training session); C.Q. Petersen, *Learning the Ways to Weed Out Crime and Fight Blight*, PRESS-ENTERPRISE (Riverside, CA), Dec. 15, 1994, at B1 (discussing SSN training seminar); Winston W. Wiley, *Neighbors Look for Trouble*, TELEGRAM & GAZETTE (Worcester, MA), Sept. 18, 1994, at A1 (discussing Worcester, MA SSN program). For a complete discussion of cases in which residents have sued neighbors and landlords for criminal activity occurring on their property, see *infra* part III. For a list of newspaper articles discussing such cases, see *infra* note 133.

16. See, e.g., *Kline v. 1500 Mass. Ave. Apt. Corp.*, 439 F.2d 477 (D.C. Cir. 1970) (applying landlord-tenant law to hold owner liable for assault on tenant by intruder); Lew

nuisance property under the federal Racketeer Influenced and Corrupt Organizations Act (RICO).¹⁷

Due to problems of proof and statutory interpretation, these theories have failed to sufficiently deal with the overwhelming drug and gang problem on Missouri properties.¹⁸ Part V of this Note therefore proposes two separate statutory amendments. The first supplements a recent Missouri law that allows landowners to sue their neighbors in small claims court. The second proposal provides additional remedies for those suing under Missouri's nuisance laws. Both proposals are based on the idea that community residents working together within the legal system are the best resources for combatting local drug and gang activity. Landowners, particularly absentee landlords, who are aware of a problem but fail to respond adequately should be held liable for damages to neighboring landowners. These damages should include compensation for depreciation of property values,¹⁹ as well as compensation for emotional distress. The suggested amendments will facilitate the joining together of individuals to fight crime in their communities.

II. HISTORY: COMMON LAW NUISANCE

Nuisances are classified as either private or public, and each represents a different area of tort liability.²⁰ However, courts apply some of the same substantive rules of law to both types of nuisances.²¹

v. Superior Court, 25 Cal. Rptr. 2d 42 (Cal. Ct. App. 1993) (applying nuisance theory); *Kelly v. Boys' Club of St. Louis, Inc.*, 588 S.W.2d 254 (Mo. Ct. App. 1979) (permitting claim based on nuisance theory to proceed). See *infra* part III for a complete discussion of these cases.

17. See *Oscar v. University Students Co-op. Ass'n*, 965 F.2d 783 (9th Cir. 1992) (discussing requirement of RICO claim). See *infra* notes 110-20 and accompanying text for a complete discussion of this case.

18. See, e.g., *Snelling v. Land Clearance for ReDev. Auth.*, 793 S.W.2d 232 (Mo. Ct. App. 1990) (affirming dismissal of nuisance claim). See *infra* notes 122-30 and accompanying text for a complete discussion of this case.

19. See *infra* note 77.

20. See generally RESTATEMENT (SECOND) OF TORTS § 821A cmt. b (1977) (noting the different meanings of "nuisance").

21. RESTATEMENT (SECOND) OF TORTS ch. 40 intro. note. See 58 AM. JUR. 2D *Nuisances* § 33 (1989).

The law of nuisance has long been noted for its confusion, and its rules remain extremely elusive. See generally Robert Abrams & Val Washington, *The Misunderstood Law of Public Nuisance: A Comparison with Private Nuisance Twenty Years After Boomer*, 54 ALB. L. REV. 359, 363-82 (1990) (contrasting public and private nuisance

Neighbors may apply either nuisance theory to stop certain activities when the use and enjoyment of their own property is adversely affected.²²

Private nuisance is a tort theory which protects the interests of landowners or those who occupy property.²³ It can be defined as a substantial and unreasonable interference with the quiet use and enjoyment of real property.²⁴ A private nuisance may arise from the unreasonable, indecent, or unlawful use by a person of his property which injures the right of another.²⁵ The use must produce some material annoyance, inconvenience, discomfort, or hurt so that the law will presume a consequent damage.²⁶ Because a private nuisance is a civil wrong based on the disturbance of an individual's rights, the remedy belongs to the one whose rights have been violated.²⁷

law). See also *Boomer v. Atlantic Cement Co.*, 257 N.E.2d 870, 871, 873 (N.Y. 1970) (permitting neighboring landowners of cement factory found to be a polluter to recover "permanent damages," but denying injunction against factory's operation as being an attempt to achieve direct public objectives beyond those of the private litigants). The tendency of courts to misuse the terms "private nuisance" and "public nuisance," and to substitute such terms for any analysis, have led even Dean Prosser to describe nuisance law as an "impenetrable jungle." W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 86, at 616-17 (5th ed. 1984). Some of the confusion arises because, at one time, someone sued for private nuisance had a defense if he could show that it was a public nuisance. J.R. Spencer, *Public Nuisance—A Critical Examination*, 48 CAMBRIDGE L.J. 55, 59 (1989). Spencer noted that nuisance "is a chameleon word, with a meaning technical or general, depending on who is using it when and where. Even lawyers often use it in its general sense, and indeed are not always clear in their own minds in which sense it is being used." *Id.* at 56.

22. See Robert Bruss, *Pest Control: Eliminating Neighborhood Nuisance May Take A Trip to Court*, CHI. TRIB., Sept. 11, 1994, at 7C (noting that the *Lew* case is an example of both public and private nuisance).

23. See RESTATEMENT (SECOND) OF TORTS § 821E (1977).

24. KEETON ET AL., *supra* note 21, § 87, at 619-20.

25. See *id.* (listing kinds of invasion on the enjoyment of land).

26. *Kramer v. Pittsburgh Coal Co.*, 19 A.2d 362, 363 (Pa. 1941). See generally 5 RICHARD R. POWELL & PATRICK T. ROHAN, POWELL ON REAL PROPERTY ¶ 704[4][d] (MB 1995).

27. KEETON ET AL., *supra* note 21, § 87, at 618. To grant a remedy to one whose rights have been violated requires proof that the individual resides in the immediate vicinity of the alleged nuisance. 58 AM. JUR. 2D *Nuisances* § 47 (1989). See *infra* note 32 and accompanying text.

The Restatement defines a private nuisance as "a nontrespassory invasion of another's interest in the private use and enjoyment of land." RESTATEMENT (SECOND) OF TORTS § 821D (1977).

Prosser and Keeton note four requirements which must be met in order to sustain an action for private nuisance.²⁸ First, the defendant must intend to interfere with the use and enjoyment of the plaintiff's land.²⁹ This requirement may be met simply by proving the defendant has full knowledge that harm to the plaintiff's property is occurring or is substantially certain to follow.³⁰ Second, of course, the plaintiff must suffer some interference with the use and enjoyment of his land.³¹ This means that for a private nuisance to be actionable, the interference must be "specially injurious" to the individual because of the proximity of the nuisance to that individual's home.³² Third, the interference that results must be substantial.³³ Finally, the interference must be unreasonable.³⁴

For a detailed discussion of the difference between trespass and nuisance, see KEETON ET AL., *supra* note 21, § 87, at 622 ("The difference is that between walking across [plaintiff's own] lawn and establishing a bawdy house next door. . .").

28. KEETON ET AL., *supra* note 21, § 87, at 622-23.

29. *Id.* § 87, at 622.

30. *Id.* § 87, at 624-25. See, e.g., *Padilla v. Lawrence*, 685 P.2d 964, 968 (N.M. Ct. App. 1984) (stating that intentional conduct may be shown if defendants know or should have known the conduct interfered with plaintiff's use and enjoyment of land; plaintiff need not prove defendant intended to offend); *Hughes v. Emerald Mines Corp.*, 450 A.2d 1, 4-5 (Pa. Super. Ct. 1982) (adopting the same view).

Courts may impose a strict liability standard if they find that the defendant engaged in "abnormally dangerous" or "ultrahazardous activity." *State, Dep't of Env'tl. Protection v. Ventron Corp.*, 468 A.2d 150, 159-60 (N.J. 1983) (concluding that dumping toxic waste in the ground is abnormally dangerous activity carrying strict liability for resulting harm).

31. KEETON ET AL., *supra* note 21, § 87, at 622. See also RESTATEMENT (SECOND) OF TORTS § 821D (1977) (defining private nuisance).

32. 58 AM. JUR. 2D *Nuisances* § 47 (1989). Similarly, the term "special damages" has been held to mean those damages suffered by an individual, including personal injury and property damages, in excess of those suffered by the public generally. See *Spencer, supra* note 21, at 74-75. Prosser uses the term "particular damages" to distinguish from the term "special damages" used in other legal actions. William L. Prosser, *Private Action for Public Nuisance*, 52 VA. L. REV. 997, 997 (1966).

33. KEETON ET AL., *supra* note 21, § 87, at 622-23, "Substantial simply means a significant harm to the plaintiff. . . ." *Id.*, § 88, at 626. The Restatement uses the word "significant" instead of "substantial." See, e.g., RESTATEMENT (SECOND) OF TORTS §§ 821B(2)(a), 821F (1977).

A substantial interference will not be found if the harm complained of is trivial. See KEETON ET AL., *supra* note 21, § 88, at 626 ("The law does not concern itself with trifles, or seek to remedy all the petty annoyances and disturbances of everyday life in a civilized community. . . ."). However, the harm need not be actual if the threat of harm is great enough. See *New York State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1361 (2d Cir. 1989) (sustaining permanent injunction against Operation Rescue based, in part, on New York City's public nuisance claim), *cert. denied*, 495 U.S. 947 (1990); *Village of*

Public nuisance, on the other hand, is a much broader concept than private nuisance.³⁵ A public or common nuisance affects the rights of the entire community.³⁶ The remedy is traditionally sought by the state.³⁷ A public nuisance has been defined as an interference with public health, public safety, public morals, or public peace.³⁸ A private

Wilsonville v. SCA Servs. Inc., 426 N.E.2d 824, 836 (Ill. 1981) ("The defendant may be restrained from entering upon an activity where it is highly probable that it will lead to a nuisance . . .") (citation omitted).

34. KEETON ET AL., *supra* note 21, § 87, at 623. The defendant's conduct need not be unreasonable. Only the nature, duration, or amount of interference must be unreasonable. *Id.* (distinguishing intentional conduct from unreasonable interference). The Restatement lists the following factors as indicators of unreasonableness in the case of public nuisance:

- (a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
- (b) whether the conduct is proscribed by a statute, ordinance or administrative regulation, or
- (c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

RESTATEMENT (SECOND) OF TORTS, § 821B(2) (1977).

35. See generally KEETON ET AL., *supra* note 21, § 90, at 643; *Abrams & Washington*, *supra* note 21, at 364-67 (discussing differences between public and private nuisance).

36. *Abrams & Washington*, *supra* note 21, at 364. The Restatement defines a public nuisance as "an unreasonable interference with a right common to the general public." RESTATEMENT (SECOND) OF TORTS § 821B(1) (1977).

See also *Armory Park Neighborhood Ass'n v. Episcopal Community Servs.*, 712 P.2d 914, 917 (Ariz. 1985) (stating "[a] public nuisance must . . . affect a considerable number of people"); *Copart Indus. v. Consolidated Edison Co.*, 362 N.E.2d 968, 971 (N.Y. 1977) (describing public nuisance, *inter alia*, as conduct which injures the "property, health, safety or comfort of a considerable number of persons" (citations omitted)). *But see* RESTATEMENT (SECOND) OF TORTS § 821B cmt. g (1977) ("It is not . . . necessary that the entire community be affected . . . so long as the nuisance will interfere with . . . the exercise of a public right . . .").

37. See KEETON ET AL., *supra* note 21, § 90, at 643 (discussing remedies available to state and other governmental units); *United States v. Olin Corp.*, 606 F. Supp. 1301, 1305 (N.D. Ala. 1985) (discussing states' use of *parens patriae* suits to enjoin public nuisances); *Missouri ex rel. Dresser Indus., Inc. v. Ruddy*, 592 S.W.2d 789 (Mo. 1980) (citing statute assigning to the attorney general authority to bring civil suits to protect state's interests).

38. 58 AM. JUR. 2D *Nuisances* § 35 (1989). Some writers have stated that a characteristic that distinguishes a public nuisance from a private nuisance is that a public nuisance is a crime. See, e.g., *Prosser*, *supra* note 32, at 997 (writing that "[a] public . . . nuisance is always a crime"). However, public nuisance is frequently brought as a civil action in certain jurisdictions. See *People v. Markovitz*, 423 N.Y.S.2d 996, 998 (N.Y. Crim. Ct. 1979) (noting that an injunction is a civil remedy, which requires a less stringent

person may only maintain an action for public nuisance if the public nuisance is "specially injurious" to himself or his property.³⁹

Public nuisance statutes trace their roots back to early common law,⁴⁰ when nuisance involved only an interference with another's property rights.⁴¹ Statutory versions of the common law eventually began to regulate conduct⁴² directly, rather than merely the interference with another's use and enjoyment of their land. These statutes, historically directed at protecting public morality,⁴³ included the tobacco⁴⁴ and alcohol ordinances⁴⁵ of the nineteenth century, the Red

standard of proof than a criminal conviction). *See also* *New York v. Shore Realty Corp.*, 759 F.2d 1032, 1037 (2d Cir. 1985) (affirming injunction against owner of real estate containing hazardous waste in pendent state law public nuisance claim).

39. KEETON ET AL., *supra* note 21, § 90, at 646 (stating that a private plaintiff bringing a public nuisance suit must show injury distinct from that sustained by the general public). This action is distinct from the government's public nuisance actions. The action, often termed a "public nuisance tort," arises only when a private citizen shows special damages against a public nuisance. *Id.* § 90, at 647 (noting general agreement that plaintiff's injuries must differ in kind, not merely degree, from those of the general public). A showing that a public nuisance also interferes with the plaintiff's use and enjoyment of the land, and thus constitutes a private nuisance, sustains a public nuisance action. RESTATEMENT (SECOND) OF TORTS § 821C cmt. e (1977). *See also* William B. Johnson, Annotation, *What Constitutes Special Injury that Entitles Private Party to Maintain Action Based on Public Nuisance—Modern Cases*, 71 A.L.R.4TH 13, § 2[b], at 23-24 (1989) (noting advantages of public nuisance claim by private plaintiff, including that statute of limitations does not run against the public right); Osborne M. Reynolds, Jr., *Public Nuisance: A Crime in Tort Law*, 31 OKLA. L. REV. 318, 322-32 (1978) (discussing the criminality requirement under public nuisance actions brought by the state or by private plaintiffs).

40. For example, early statutes permitted civil and criminal actions for keeping "disorderly houses." B.A. Glesner, *Landlords as Cops: Tort, Nuisance & Forfeiture Standards Imposing Liability on Landlords for Crime on the Premises*, 42 CASE W. RES. L. REV. 679, 723 (1992). One case describes a "disorderly house" as a place "kept in such a way as to disturb, annoy, and scandalize the public generally or the neighborhood, or the passers-by on a highway . . ." *Mossman v. City of Ft. Collins*, 90 P. 605, 606 (Colo. 1907) (internal quotations omitted).

41. For a discussion of the expansion of the nuisance concept beyond protection of property rights, see Glesner, *supra* note 40, at 716-17.

42. Glesner, *supra* note 40, at 723-24 (discussing laws and ordinances regulating alcohol, tobacco, narcotics, and prostitution). *See generally* Jerome H. Skolnick, *The Social Transformation of Vice*, 51 LAW & CONTEMP. PROBS. 9 (1988) (discussing the history of vice control in the United States).

43. Glesner, *supra* note 40, at 723-24.

44. *See, e.g., Austin v. State*, 48 S.W. 305 (Tenn. 1898) (upholding ordinance restricting the sale of cigarettes), *aff'd*, 179 U.S. 343 (1900).

Light Abatement Acts of the early twentieth century,⁴⁶ and the liquor control statutes of the prohibition era.⁴⁷ Historically, nuisance law was used to close down brothels, speak-easies, and gambling dens. Today, nuisance law may be used to close down drug houses and gang headquarters.⁴⁸

III. LANDLORD LIABILITY FOR CRIMINAL ACTIVITY

This Note is concerned with a particular category of nuisance: nuisance resulting from criminal activity occurring on a landlord's or neighbor's property, particularly patterns of violence related to drug dealing and street gangs. Issues of landlord liability with respect to such alleged nuisance properties arise in two contexts. First, tenants often sue their landlords when criminal activity takes place on the leased property

45. See generally Henry Schofield, *Equity Jurisdiction to Abate and Enjoin Illegal Saloons as Public Nuisances*, 8 ILL. L. REV. 19 (1913) (discussing alcohol ordinances of the nineteenth century).

46. Glesner, *supra* note 40, at 724. These statutes regulated prostitution houses. *Id.* at 724 n.243. See, e.g., *Nuisances: To Enjoin and Abate Houses of Lewdness, Assignment and Prostitution*, 1921 Mo. Laws 523 (codified as amended at MO. REV. STAT. § 567.080 (1979)). The current statute defines "[a]ny room, building or other structure regularly used for sexual contact for pay . . . or any unlawful prostitution activity . . ." as a public nuisance. MO. REV. STAT. § 567.080.1 (1994).

47. See, e.g., MO. REV. STAT. ch. 32, § 4943 (1939) (current version at MO. REV. STAT. § 311.740 (1994)). This statute states:

[A]ny room, house, building, boat, vehicle, structure or place of any kind where intoxicating liquor is sold, manufactured, kept for sale or bartered . . . and all intoxicating liquors and all property kept and used in maintaining such a place . . . is hereby declared to be a public and common nuisance

Id.

48. Michelle J. Stahl, Comment, *Oscar v. University Students Cooperative Ass'n: Can Citizens Use RICO to Rid Neighborhoods of Drug Houses?*, 67 NOTRE DAME L. REV. 799, 799-800 (1992).

In 1987, Portland, Oregon became one of the first major cities to use its public nuisance abatement laws to close drug houses. *Now, Cities Hit Drug Suspects Where They Live*, N.Y. TIMES, Jan. 25, 1991, at B16. Since 1987, Portland has applied its ordinance over 700 times and other cities have followed. *Id.*

In addition, neighbors often sue owners of nuisance properties for damages. Hart, *supra* note 15, at G1. See also Katherine Bishop, *Neighbors in West Use Small Claims Court to Combat Drugs*, N.Y. TIMES, Oct. 17, 1989, at A16 (noting recent nuisance actions in small claims courts against owners of buildings that housed drug related activity). For examples of the widespread media coverage such cases have received in California, see *infra* note 133.

and results in violence.⁴⁹ Placing a duty upon the landlord to reasonably protect his tenants from foreseeable criminal acts committed on the leased premises is an appropriate extension of the landlord's common law duties in light of modern concerns with crime.⁵⁰ The second context implicates a landlord's duty to protect neighbors from the activities of tenants⁵¹ and others.⁵²

A. *Tenants Suing Landlords:*

Kline v. 1500 Massachusetts Avenue Apartment Corp.

Courts have found it to be a landlord's duty to protect tenants from criminal activity by third parties under a number of theories, including breach of an express or implied obligation imposed by a lease, breach of a statutory duty, and under tort principles of foreseeability.⁵³ This section discusses the broad trend toward finding landlord liability on the basis of the foreseeable risks to tenants.

The 1970 case of *Kline v. 1500 Massachusetts Avenue Apartment Corp.*⁵⁴ was the first to successfully establish a landlord's tort liability

49. Historically, tenants in such actions offered several different theories to justify landlord liability in tort for third party criminal activities. See generally Gary D. Spivey, Annotation, *Landlord's Obligation to Protect Tenant Against Criminal Activities of Third Persons*, 43 A.L.R.3d 331 (1972) (discussing landlord duty, breach, and remedies). These include claims based on contract and misrepresentation. Glesner, *supra* note 40, at 686-87. In addition, tenants have pursued claims of liability through defenses based on constructive eviction and the implied warranty of habitability. *Id.* See, e.g., *Fidelity Mut. Life Ins. Co. v. Kaminsky*, 768 S.W.2d 818, 823 (Tex. Ct. App. 1989) (upholding constructive eviction defense on the basis of landlord's failure to stop protesters on premises); *Blaustein v. Gilbert-Dallas Co.*, 749 S.W.2d 633, 634 (Tex. Ct. App. 1988) (finding a duty based on express lease provisions in an action brought by tenant raped on premises). However, most theories developing the landlord's duty have arisen as negligence actions. Glesner, *supra* note 40, at 688.

50. See generally Miriam J. Haines, *Landlords or Tenants: Who Bears the Costs of Crime?*, 2 CARDOZO L. REV. 299, 300 (1981) (arguing for landlord duty to protect tenants from foreseeable crimes on the leased premises).

51. See Glesner, *supra* note 40, at 716-40 (discussing landlord liability for public nuisances caused by tenants).

52. See, e.g., *Kelly v. Boys' Club of St. Louis, Inc.*, 588 S.W.2d 254, 256 (Mo. Ct. App. 1979) (permitting damage claim for nuisance for property allowed to deteriorate, inviting vandalism and dumping).

53. See generally, Spivey, *supra* note 49, § 2 (outlining circumstances under which courts have found a duty to protect tenants).

54. 439 F.2d 477 (D.C. Cir. 1970).

to tenants for a third party's criminal actions.⁵⁵ The *Kline* court held that the landlord, although not an insurer of the tenant's safety, must take steps within his power to minimize the risk of crime against his tenants' persons and their property when he has knowledge of the insufficiency of existing security measures.⁵⁶ The court established a test based on foreseeability to determine when the risk of crime creates liability for a landlord who fails to take reasonable measures to protect his tenants.⁵⁷ To successfully pass this foreseeability-based test, a tenant must prove that there was a defect on the premises, that the landlord had control over and knowledge of the defect, and that the defect foreseeably enhanced the risk of criminal activity.⁵⁸

As the *Kline* case illustrates, a recent trend has broadened landlord responsibility for criminal activity on rented property.⁵⁹ As a result,

55. Haines, *supra* note 50, at 299. The plaintiff sued her landlord for injuries sustained after she was criminally assaulted and robbed in a common hallway. *Kline*, 439 F.2d at 478. The circuit court found "that there [was] a duty of protection owed by the landlord to the tenant"

56. *Kline*, 439 F.2d. at 481. The court examined traditional principles of landlord-tenant law in the context of modern urban apartment living. *Id.* The court noted that some duties arise out of the landlord's control over common areas of the property. *Id.* at 480, 482. The court also cited precedent establishing an implied contract requiring the landlord to provide reasonable protective measures. *Id.* at 485 (citing *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970)). Finally, the court analogized to the common law duty of the innkeeper to protect guests from criminal acts by third parties. *Kline*, 439 F.2d at 482, 485. See also, Haines, *supra* note 50, at 317-19.

57. *Id.* at 487 ("The risk of criminal assault and robbery on any tenant was clearly predictable"). *Kline* has been criticized as difficult to apply, because it "is unclear as to what protective measures are necessary to meet the standard of care enunciated." Haines, *supra* note 50, at 350.

58. Glesner, *supra* note 40, at 690. See *Kline*, 439 F.2d at 487. For example, in *Kline*, the landlord exclusively controlled the areas in need of protection and knew of other tenants who had been criminally assaulted and robbed. *Id.* at 479-80. Nevertheless, the landlord failed to take adequate security measures, and in fact reduced existing security, leaving entrances unguarded and unlocked much of the time. *Id.* at 479.

59. See generally Glesner, *supra* note 40, at 684-99 (discussing the duty to protect tenants). See also *Holley v. Mount Zion Terrace Apartments, Inc.*, 382 So. 2d 98, 100 (Fla. Dist. Ct. App. 1980) (reversing summary judgment for landlord on finding that it had previously supplied guards and may have passed security costs on to tenants); *Brock v. Watts Realty Co.*, 582 So. 2d 438 (Ala. 1991) (reversing summary judgment for landlord in suit brought by administratrix of murdered tenant's estate, holding that landlord had a duty to the tenant to maintain locks); *Aaron v. Havens*, 758 S.W.2d 446, 447 (Mo. 1988) (stating that landlord has a duty to use due care to make common premises safe against foreseeable risks).

landlords have been increasingly exposed to both civil and criminal liability for the criminal activities occurring on their properties.⁶⁰ For example, the New York case of *Jacqueline S. v. City of New York*⁶¹ extended the evidence necessary to demonstrate foreseeable risk to include past criminal activity occurring in close proximity to a rented property, but not necessarily in the exact location.⁶² In this case, a fourteen-year-old tenant sued the landlord of her housing complex for negligence when she was abducted and raped by an assailant inside her apartment building.⁶³ The tenant produced evidence that previous violent criminal activity had occurred in several of the housing complex buildings.⁶⁴ In holding that a triable issue of foreseeability of assault on a tenant existed, the New York Court of Appeals emphasized that the operative proof need not be limited to crimes actually occurring in the specific building where the attack took place.⁶⁵ By ruling that evidence

60. For an exhaustive review of landlord liability and a criticism of the broadening of such liability, see Glesner, *supra* note 40.

61. 614 N.E.2d 723 (N.Y. 1993).

62. *Id.* at 726. At issue was whether a tenant in a multi-building apartment complex had to show that previous criminal acts had occurred in her building from which she was abducted. *Id.* at 725. The court refused to so limit the foreseeability rule, noting a high number of similar crimes within the housing project. *Id.* After *Kline*, cases began to include evidence that a building was located in a high crime area or that previous attacks had occurred in the area, because such knowledge is relevant to the issue of foreseeability. See generally Spivey, *supra* note 49, § 8 (collecting cases applying the foreseeability test).

63. *Jacqueline S. v. City of New York*, 582 N.Y.S.2d 697 (N.Y. App. Div. 1992), *rev'd*, 614 N.E.2d 723 (N.Y. 1993).

64. *Jacqueline S.*, 614 N.E.2d at 724. A Housing Authority police officer testified that she had responded to several reports of forcible rapes and 20 or more forcible robberies prior to the attack on the plaintiff. *Id.* The tenant provided evidence of dangerous conditions in her building. *Id.* The assistant building superintendent testified that drug paraphernalia, drug addicts, and intruders could be found "all over the place." *Id.* Despite these conditions, the door to the lobby was not locked, and security personnel were not stationed in the building. *Id.*

The Appellate Division granted summary judgment for the defendant landlord, holding that the evidence was insufficient to make the crime reasonably foreseeable in the tenant's own building. *Id.* at 727. It therefore applied a "minimal" safety standard to determine the landlord's duty, and found the landlord met that duty. *Jacqueline S.*, 582 N.Y.S.2d at 698-99.

65. *Jacqueline S.*, 614 N.E.2d at 725-26. The court also held that the evidence need not be of the same type of criminal conduct. *Id.* at 726. Rather, the court held that the sufficiency of such evidence depends on the location, nature, and extent of the previous criminal activity, as well as its similarity, proximity, or other relationship to the crime in question. *Id.*

of prior criminal activity occurring *in or around* the premises may be admitted, this decision further broadened landlord liability for the actions of third persons.

B. Neighbors Suing Landlords for Maintaining Nuisance Properties

Some courts have gone even further than *Kline* and *Jacqueline S.* in expanding landlord liability. Rather than holding landlords responsible exclusively to their own tenants, courts have begun to hold landlords responsible to neighbors of their property as well. This line of cases constitutes the second context under which landlords may be held liable for crimes committed on their properties.

In 1979, in *Kelly v. Boys' Club of St. Louis, Inc.*,⁶⁶ the Missouri Court of Appeals applied a test similar to the *Kline* foreseeable risk test to hold the owner of a nuisance property responsible to his neighbors.⁶⁷ John and Janice Kelly, owners of a home in the Souldard Historic District in the city of St. Louis, sued their neighbors, the Boys' Club of St. Louis, under a nuisance theory.⁶⁸ The Kellys alleged that the neighboring property had become a health hazard and a haven for vandals, arsonists, and undesirables.⁶⁹ Unlike the *Kline* and *Jacqueline S.* cases, a criminal attack had not occurred. Rather, the plaintiffs sought injunctive relief to require the owner of the Boys' Club property to preserve the property, and damages for nuisance and emotional distress.⁷⁰

The dissent found this test to be overly vague as well as broad, and asserted that the court's ruling would render the landlord "an unlimited insurer of the safety of its premises against urban crime." *Jacqueline S. v. City of New York*, 614 N.E.2d 723, 726 (N.Y. 1993) (Bellacosa, J., dissenting).

66. 588 S.W.2d 254 (Mo. Ct. App. 1979).

67. *Id.* at 257.

68. *Id.* at 255.

69. *Id.* at 255-56. The plaintiffs alleged the Boys' Club "permitted the buildings to deteriorate by evicting the tenants, by inviting the public to remove whatever they desired from the buildings, by failing to secure or board up the buildings, by permitting weeds to grow upon the property and by permitting the property to be used for dumping rubbish and noxious materials." *Id.* at 255.

70. *Id.* The plaintiffs sought actual and punitive damages, alleging their home had been damaged, their personal property had been stolen, and their peace had been disturbed, impairing their health, and reducing their property's value. *Id.* at 256.

The Circuit Court of the City of St. Louis dismissed the complaint, and the plaintiffs appealed.⁷¹ The Missouri Court of Appeals reversed, focusing on the fact that the property owners had intentionally and deliberately allowed their property to seriously deteriorate.⁷² According to the court, the landowners permitted the property to become a haven for criminals, to the detriment of their neighbors.⁷³ Therefore, the Boys' Club could not blame the resulting nuisance on the criminal activities caused by third parties.⁷⁴ Like the *Kline* court, the *Kelly* court held that the requisite causal connection had been met because "the defendants had reasonable anticipation of harm and failed to exercise reasonable care to avert such harm."⁷⁵

The California Court of Appeal employed similar reasoning in the recent case of *Lew v. Superior Court*.⁷⁶ In *Lew*, seventy-five neighbors of an apartment complex sued the landlords of the complex for mental distress caused by the illegal activities occurring on and near the landlords' nuisance property.⁷⁷ The plaintiffs claimed that the landlords' failure to combat a drug-dealing operation on the property created a nuisance.⁷⁸ Neither the dealers, their customers, nor the

71. *Kelly*, 588 S.W.2d at 255.

72. *Id.* at 257 ("A property owner cannot knowingly allow his property to become a haven for criminals to the detriment of his neighbors and deny that his property has become a nuisance because the resulting criminal activities are those of third parties."). The nuisance count included allegations that the Boys' Club violated city ordinances and refused to permit other persons to protect the property. *Id.* at 256.

73. *Id.* at 257.

74. *Id.*

75. *Id.* (citation omitted).

76. 25 Cal. Rptr. 2d 42 (Cal. Ct. App. 1993).

77. *Id.* at 43. California's Health & Safety Code § 11570 specifically declared that properties used for the manufacture, storage, or sale of controlled substances were nuisances. CAL. HEALTH & SAFETY CODE § 11570 (West 1991). After losing in small claims court and at trial de novo in the Alameda County Superior Court, the landlords appealed. *Lew*, 25 Cal. Rptr. 2d at 43-44. They asserted that they were not responsible for the tortious acts of third parties, *id.* at 44, and that the California nuisance statute § 11570 provided only for abatement, not the actual and punitive damages awarded to plaintiffs. *Id.* at 45.

78. *Id.* at 43-44. Several plaintiffs submitted affidavits asserting they had been confronted by drug dealers, drug customers, and prostitutes. *Id.* at 43. Such confrontations, along with the sounds of gun shots, fighting, and yelling, caused the tenants to fear for their lives. *Id.* at 43-44. One neighbor testified that his child was unable to play in the front yard because of the pervasive illegal activity. *Id.* at 44.

neighboring residents were tenants of the landlords.⁷⁹ Nevertheless, the court found the landlords had not acted reasonably in dealing with the problem.⁸⁰ The court of appeal therefore affirmed a judgment for the plaintiffs totaling \$218,325.⁸¹

Like the *Kelly* court, the *Lew* court emphasized that the plaintiffs were not seeking to recover for the criminal acts of the third parties, but rather for the acts of the landlords in maintaining their property as a nuisance.⁸² The owners failed to do what a reasonable person under the same or similar circumstances would have done.⁸³ Because the defendants acted negligently in their management of the property, the court did not have to face the more difficult question of whether to impose liability on owners whose property has become a nuisance through no fault of their own.⁸⁴

The *Lew* case signifies a tremendous increase in the duty of property owners to protect others from criminal activity.⁸⁵ Once the court found that the owners had been negligent in their management of the property

79. *Id.* The landlords argued that under California law, they were not responsible for the tortious acts of third parties committed off the landlord's property. *Id.*

80. *Id.* at 47. The court rejected the landlords' argument that their property was not a haven for drug activity. *Id.* The court further rejected the landlords' claim of inability to prevent the nuisance activity. *Id.*

81. *Lew*, 25 Cal. Rptr. 2d, at 44, 47. The landlords also argued, unsuccessfully, that the California statute finding criminal activity to be a nuisance allowed only an abatement action, not an action in damages. *Id.* at 45 (addressing sections of the California Health and Safety Code). The court held nothing in the statutory scheme foreclosed the lesser remedy of a private action for damages in small claims court. *Id.* The relevant section of the California Health and Safety Code provides that the remedies for such an action "shall be in addition to any other existing remedies for nuisance abatement actions . . ." CAL. HEALTH & SAFETY CODE § 11573.5(f) (West Supp. 1996).

82. *Lew*, 25 Cal. Rptr. 2d at 46. The court below found that the landlords failed to take necessary remedial steps, such as installing a key-card gate or hiring a live-in manager to manage their property. *Id.* at 44, 47.

83. *Id.* at 47. The lower court had found that the owners "knew or should have known" of the illegal activity and consequent problems. *Id.* at 44.

84. *Id.* at 46. This statement may indicate the court's belief that the injury might not have been compensable without evidence of landowner negligence. However, for a discussion of strict liability placed on landlords for maintaining nuisance properties, see Glesner, *supra* note 40, at 734-35 (discussing various treatments of landlords' knowledge of or participation in illegal activities on their properties).

85. *Tenants Can Sue Landlord Over Drugs*, SAN DIEGO UNION-TRIB., Dec. 2, 1993, at A4 (noting the important precedent set by the *Lew* case).

by failing to take reasonable steps to stop the drug dealing,⁸⁶ it in effect held the owners liable for the acts of the third-party drug dealers, even when some of these acts were committed off of the owners' property.⁸⁷ Furthermore, the court held the landlords responsible for emotional distress caused by the drug-dealing activity on their property.⁸⁸ Unlike other nuisance cases that found an increased risk of violence due to previous acts of violence,⁸⁹ the *Lew* case was based on mental, rather than physical, attacks.⁹⁰

Landowner tort liability has increased significantly in recent years. This increase is partly due to the expansion of the scope of a landlord's duty of care from its initial focus on the physical condition of the premises to its current concern with overall residential safety.⁹¹ This tremendous expansion of a landlord's duty to protect both tenants and neighbors has been criticized as wrongfully requiring landlords to control the conduct of others.⁹² Critics argue that the nature of a landlord's duty is confined to controlling and maintaining the physical condition of the leased premises so as to prevent crime.⁹³ Furthermore, a broad landlord duty to control the actions of third parties ignores an important distinction between requiring a landlord to act once a dangerous condition becomes apparent, and encouraging a landlord to prospectively

86. *Lew*, 25 Cal. Rptr. 2d at 46-47.

87. *See supra* note 79.

88. *Lew*, 25 Cal. Rptr. 2d at 46 ("The mental suffering which is the main component of the [alleged] injuries . . . is compensable under a nuisance theory."). *See also supra* notes 77-78 and accompanying text (discussing the alleged mental suffering).

89. For a sample of such cases, *see supra* note 59.

90. *Lew*, 25 Cal. Rptr. 2d at 46.

91. *See generally* Olin L. Browder, *The Taming of a Duty—The Tort Liability of Landlords*, 81 MICH. L. REV. 99, 109-16 (1982) (discussing the expansion of landlord duty); Haines, *supra* note 50, at 353-56 (arguing for legislative alternatives to the judicial imposition of landlord liability when crime occurs on the leased premises).

92. *See generally* Glesner, *supra* note 40, at 758-64 (examining the shift from an individualist ideology to a communalist ideology in the analysis of landlord liability). *See also* Jacqueline S. v. City of New York, 614 N.E.2d 723, 726 (N.Y. 1993) (Bellacosa, J., dissenting) (arguing this expansion "imposes a sweeping negligence liability burden of impossible practical and functional dimensions . . .").

93. *See* Glesner, *supra* note 40, at 784 (stating that enforcing minimum standards of property maintenance is preferable to expanding landowner liability to combat crime).

prevent risk by discriminating against certain types of tenants.⁹⁴ For these reasons, plaintiffs must still produce some evidence of criminal activity occurring on the defendant's property, a threat to their safety, or an interference with the use and enjoyment of their property, in order to bring a criminal nuisance claim.⁹⁵

IV. THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

A. *History of RICO*

In 1970, Congress enacted the Organized Crime Control Act,⁹⁶ Title IX of which is the Racketeer Influenced and Corrupt Organizations Act (the Act or RICO).⁹⁷ The Act grants treble damages and attorneys' fees to persons injured in their business or property due to racketeering activity.⁹⁸ By enacting RICO, Congress primarily sought to eradicate organized crime in the United States.⁹⁹ However, RICO reaches further

94. Haines, *supra* note 50, at 345. See Glesner, *supra* note 40, at 780-82 (discussing tenant-screening issues).

95. See *supra* notes 28-34 and accompanying text (discussing the requirements for nuisance claims). In *Lew*, liability was imposed on a theory of active fault on the part of the defendants in the management of their property. *Lew v. Superior Court*, 25 Cal. Rptr. 2d 42, 46 (Cal. Ct. App. 1993). See *supra* notes 82-85 and accompanying text. The court left open the question of how much evidence is actually required. *Lew*, 25 Cal. Rptr. 2d at 46. The defendants did not attack the sufficiency of the evidence of damage; rather, they denied their property was a hub of drug activity. *Id.* The court found this attack to be without merit. *Id.*

96. Pub. L. No. 91-452, 84 Stat. 922 (1970).

97. 18 U.S.C. §§ 1961-1968 (1994).

98. 18 U.S.C. § 1964(c) provides 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 district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c) (1994).

99. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 922-23 (1970). The Congressional Statement of Findings and Purpose provided in part:

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.

Id. at 923.

than its name indicates.¹⁰⁰ the Act does not apply solely to organized criminals.¹⁰¹ Rather, RICO prohibits certain behavior and activities which are characteristic of organized crime.¹⁰² Therefore, plaintiffs may relatively easily incorporate a RICO count into any civil complaint against structured criminality,¹⁰³ including a suit for nuisance caused by crime on one's property.¹⁰⁴

Several courts attempted to limit the Act's scope by prohibiting the treble damages remedy against individual defendants.¹⁰⁵ However, the Supreme Court in *Sedima, S.P.R.L. v. Imrex Co., Inc.*,¹⁰⁶ refused to

100. Congress mandated that the courts construe RICO liberally. Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970).

See G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1031-32 (1980) (arguing that RICO should be construed liberally because its purpose is not to determine whether conduct is criminal but to impose remedies on conduct already determined to be criminal).

But see Ethan M. Posner, Note, *Clarifying a "Pattern" of Confusion: A Multi-Factor Approach to Civil RICO's Pattern Requirement*, 86 MICH. L. REV. 1745, 1769-70 (1988) (citing use of RICO to bring suits alleging securities fraud, and in cases involving takeover battles and matrimonial disputes); Patrick J. Ryan, Note, *The Civil RICO Pattern Requirement: Continuity and Relationship, a Fatal Attraction?*, 56 FORDHAM L. REV. 955 (1988) (arguing that RICO should be used to target organized criminal activity).

101. See, e.g., *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 248 (1989) (noting that "Congress . . . chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime."); *Crocker Nat'l Bank v. Rockwell Int'l Corp.*, 555 F. Supp. 47, 49 (N.D. Cal. 1982) (finding that Congress did not intend to limit the scope of RICO to persons connected with organized crime).

102. See, e.g., *United States v. Vignola*, 464 F. Supp. 1091, 1095-96 (E.D. Pa.) (noting that RICO proscribes certain behavior which Congress concluded is commonly engaged in by members of organized crime), *aff'd* 605 F.2d 1199 (3d Cir. 1979), *cert. denied*, 444 U.S. 1072 (1980); *Yancoski v. E.F. Hutton & Co., Inc.*, 581 F. Supp. 88, 96 (E.D. Pa. 1983) (arguing that RICO prohibits activities characteristic of organized crime even when they are engaged in by a single individual).

103. See G. Richard Strafer et al., *Civil RICO in the Public Interest: "Everybody's Darling,"* 19 AM. CRIM. L. REV. 655, 656-57 (1982).

104. E.g., *Oscar v. University Students Co-op. Ass'n*, 965 F.2d 783, 786-87 (9th Cir.), *cert. denied*, 506 U.S. 1020 (1992) (discussing financial loss requirement in RICO suit brought against owners of nuisance property).

105. See, e.g., *Moss v. Morgan Stanley Inc.*, 553 F. Supp. 1347, 1358-64 (S.D.N.Y.) (denying plaintiff's RICO claim against investment banker's employer following banker's conviction for securities fraud because there was no racketeering activity), *aff'd*, 719 F.2d 5 (2d Cir. 1983), *cert. denied*, 465 U.S. 1025 (1984).

106. 473 U.S. 479 (1985).

grant this remedial power to the judiciary.¹⁰⁷ Despite its refusal to preclude private RICO actions against individuals, the Supreme Court limited the statute by holding that a "pattern of racketeering activity" requires at least two acts.¹⁰⁸ These acts must show continuity and be related to each other.¹⁰⁹

B. *Oscar v. University Students Co-op. Ass'n*

A group of tenants in a California apartment building sued the owner of a neighboring student co-operative, alleging that the students' illegal activities interfered with the use and enjoyment of their property.¹¹⁰ The tenants brought their claim under RICO seeking treble damages.¹¹¹ They alleged decreases in their properties' values.¹¹² The district court dismissed the case for failure to state a claim.¹¹³ A

107. *Id.* at 499-500. The court stated that "[i]t is not for the judiciary to eliminate the private action in situations where Congress has provided it simply because plaintiffs are not taking advantage of it in its more difficult application." *Id.*

108. *Id.* at 496 n.14. In a footnote, Justice White emphasized that the target of RICO was not sporadic activity, noting that "[t]he legislative history supports the view that two [unrelated] acts of racketeering activity do not constitute a pattern." *Id.*

109. *Id.*

110. *Oscar v. University Students Co-op. Ass'n*, 965 F.2d 783, 784 (9th Cir. 1992). Plaintiffs alleged that the student residents formed a conspiracy to sell drugs. *Id.* In furtherance of the conspiracies, the defendants dumped the bodies of persons suffering from drug overdoses on their neighbors' land. *Id.* The plaintiffs alleged that the defendants were responsible for filth, risk of disease, noise, violence, throwing garbage on property, urinating on cars, vandalism, as well as numerous other crimes, misdemeanors, nuisances, and annoyances. *Id.*

In fact, the student co-operative was known nationally as a "drug den and anarchist household." Sam Whiting, *The Co-Op That Chaos Killed*, S.F. CHRON., Apr. 9, 1990, at B3 (quoting neighbors). Nude dinners and other bacchanalian festivals often turned riotous, bringing the Hall to the attention of the media and police. *Id.* See also e.g., Debra L. Holtz, *UC Student Co-Op Wins Fight to Evict Tenants*, S.F. CHRON., Mar. 23, 1990, at A4 (reporting that a resident had died after falling off the roof of the building, and that violent clashes with the police had occurred); *The State*, L.A. TIMES, Oct. 18, 1987, at 2 (reporting that seven people were taken to the hospital from Barrington Hall after consuming LSD-spiked punch); Jim H. Zamora, *Barrington Hall, Once Hotbed of UC Radicalism, Closes*, L.A. TIMES, Apr. 10, 1990, at A3 (reporting confrontation between police and 500 people at Barrington Hall).

111. 18 U.S.C. §§ 1961-1968 (1994). Under § 1964(c), plaintiffs who prove damages as a result of racketeering activities may recover treble damages. See *supra* note 98 for text of § 1964(c).

112. *Oscar*, 965 F.2d at 786.

113. *Id.* at 784.

three-judge panel of the United States Court of Appeals for the Ninth Circuit reversed.¹¹⁴ However, on rehearing en banc, the Ninth Circuit held that Oscar had not demonstrated financial loss, a requirement for recovery under RICO.¹¹⁵ In so holding, the Court emphasized that RICO was not intended to grant a federal cause of action and the recovery of treble damages to every personal injury plaintiff; rather, its intent was to thwart organized crime and to prevent the criminal invasion of legitimate businesses and property.¹¹⁶

The dissent in *Oscar* disagreed with the majority's narrow construction of RICO damages.¹¹⁷ The dissent argued that the statute was intended precisely to rescue and grant recovery to neighbors suing narcotics dealers who reduce the quality of life in their neighborhood.¹¹⁸ The dissent, therefore, would not have imposed the tangible-financial-loss requirement,¹¹⁹ and would have allowed Oscar to recover

114. *Oscar v. University Students Co-op. Ass'n*, 939 F.2d 808 (9th Cir. 1991). The court found (1) plaintiffs had a property interest under state law despite being renters, *id.* at 810-11; (2) this interest was protected by RICO, *id.* at 811; and (3) the racketeering activities were the direct cause of plaintiffs' injuries, *id.* at 813. The court held, however, that RICO could not compensate for "unneighborly conduct;" *i.e.*, "filth, risk of disease, and noise . . . violence, [the] throwing of garbage on [their] property, people urinating on cars parked at [their property], vandalism, and burglary." *Id.* (alterations in original) (internal quotations omitted).

115. *Oscar v. University Students Co-op. Ass'n*, 965 F.2d 783, 786 (9th Cir. 1992) (en banc). The court noted two limitations on the tenant's potential recovery under RICO. First, the court stated that "a showing of 'injury' requires proof of concrete financial loss, and not mere injury to a valuable intangible property interest." *Id.* at 785 (internal quotations omitted). Because the tenant rented the apartment, and did not own it, she could not receive the diminution in fair market value. *Id.* at 786-87.

Second, the court asserted that "personal injuries are not compensable under RICO." *Id.* at 785 (citing cases denying recovery). The court categorized the tenant's loss as "personal discomfort and annoyance" due to the nuisance. *Id.* at 787. Though such injuries may support a nuisance claim, they are not compensable under RICO. *Id.*

116. *Id.* at 786 (citing *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 918-19 (3d Cir. 1991) (explaining that RICO plaintiffs may recover damages for harm to business and property only)).

117. *Oscar*, 965 F.2d at 788 (Kleinfeld, J., dissenting).

118. *Id.* The dissent argued that "Congress has not authorized us to erect this door and shut it on a kind of case most central to achieving the purposes of the statute." *Id.*

119. *Id.* The dissent emphasized that "damages for injury to property are generally measured other than by realized financial loss." *Id.* The dissent turned to the statutory language itself and noted that § 1964(c) allows recovery for anyone "injured in his . . . property." *Id.* (quoting 18 U.S.C. § 1964(c)). The statute does not impose a requirement of "consequent financial loss." *Id.*

treble damages as a reward for turning in the racketeers.¹²⁰ The confusion caused by the varying interpretations of RICO is not unique to the Ninth Circuit: A consistent definition of "pattern"¹²¹ and other RICO requirements has eluded the courts for years and has spawned endless debate among commentators.

V. PROPOSALS

A. *Amendment to Missouri Revised Statute Section 82.1025*

The purpose of this Note is to explore means by which the residents of Missouri's inner cities can combat the spread of crime and danger that attends the presence of drug houses. Thus, this section turns to an examination of two existing mechanisms. First, Missouri Revised Statute section 82.1025 permits suits against nuisance property owners in small claims court. Second, Missouri also has nuisance abatement statutes which provide limited remedies against nuisance properties. Both approaches can be modified to make them more effective tools in neighborhood restoration.

In 1989, Lonnie Snelling, a St. Louis City resident, sued the Land Clearance for Redevelopment Authority (LCRA) under a nuisance theory.¹²² Snelling presented evidence that the property was in "a high crime area and not a desirable place to live."¹²³ He alleged that the nuisance decreased the value of his property and made it unrentable.¹²⁴ Unlike the plaintiffs in the *Kelly* case,¹²⁵ Snelling offered no evidence

120. *Oscar*, 965 F.2d at 798. The dissent here noted that RICO is more than a "compensatory statute federalizing nuisance law." *Id.* The treble damages provision makes plaintiffs private attorneys general. *Id.* The dissent further asserted that, "[t]he rewards, enhancement of property values in neighborhoods liberated from criminals beyond what they were when the plaintiffs moved in, and money for the tenants and their lawyers who pursue this worthy objective, are incentives precisely within the statutory purpose." *Id.*

121. See Posner, *supra* note 100, at 1748 (noting that the United States Supreme Court opinion in *Sedima* increased confusion regarding the refunded level of wrongful activity); Ryan, *supra* note 100, at 956 (noting four views on the correct interpretation of RICO's pattern requirement).

122. See *Snelling v. Land Clearance for Redevelopment Authority for the City of St. Louis*, 793 S.W.2d 232 (Mo. Ct. App. 1990).

123. *Id.*

124. *Id.*

125. *Kelly v. Boys' Club of St. Louis, Inc.*, 588 S.W.2d 254 (Mo. Ct. App. 1979). See *supra* notes 67-75 and accompanying text (discussing the *Kelly* case). Note that *Kelly*

that the property had deteriorated or that the defendant had violated any city ordinances.¹²⁶ The Circuit Court of the City of St. Louis therefore held that Snelling had failed to prove the existence of a nuisance.¹²⁷ The Missouri Court of Appeals affirmed, noting that Snelling had not established that the LCRA was "in any way responsible for the alleged nuisance."¹²⁸

The obvious flaw in Snelling's case was his lack of proof. He was a *pro se* plaintiff with a heavy burden.¹²⁹ Had he united with his neighbors, as the plaintiffs did in *Lew*,¹³⁰ his case would have been much stronger. *Lew* demonstrates that organized neighbors of drug-infested buildings that produce a spillover of violence can successfully sue the property owners under a nuisance theory in small claims court.¹³¹ Not only have the *Lew* court and others held responsible those landlords who ignored the problems,¹³² but the media have also given these suits extensive coverage.¹³³

was also tried in the Eastern District of the Missouri Court of Appeals, eleven years prior to the *Snelling* case.

126. *Snelling*, 793 S.W.2d at 232. See *supra* note 69 and accompanying text.

127. *Snelling*, 793 S.W.2d at 232.

128. *Id.* The Court of Appeals also stated that Snelling offered no evidence of LCRA's ownership or control of the alleged nuisance property. *Id.*

129. *Id.* A *pro se* plaintiff is one who appears in court on his own behalf, without a lawyer. BLACK'S LAW DICTIONARY 1221 (6th ed. 1990).

130. *Lew v. Superior Court*, 25 Cal. Rptr. 2d 42 (Cal. Ct. App. 1993).

131. See *supra* notes 76-90 and accompanying text for discussion of the *Lew* case.

132. See *supra* part III for a complete discussion of landlord liability for criminal activity and common law nuisance.

133. An overwhelming majority of the media coverage involves claims in California. See *Berkeley Landlord Sued for \$5,000—67 Times*, S.F. CHRON., Sept. 13, 1991, at A26; L.A. Chung, *S.F. Agency Sued Over Hayes Valley Project Crime*, S.F. CHRON., Apr. 24, 1990, at B12; *Drug House Owner Loses Appeal of Suit*, S.F. CHRON., Mar. 15, 1990, at A11; Pamela Fitzsimmons, *Neighbors Battle Owner Over Tenants*, SAN BERNARDINO COUNTY SUN, May 6, 1994, at B8; Norman E. Frowley, *Case Puts Landlords on Notice: Evidence of Crime in Neighborhood Opens Door to Liability*, N.Y. L.J., July 28, 1993, at 5; Stephanie B. Goldberg, *Bad Neighbors: Landlords Liable for Drug-Dealing on Premises*, A.B.A.J., Feb. 1994, at 95; Len Hall, *Neighbors Win Big in Small-Claims Case*, L.A. TIMES, Jan. 19, 1995, at B1; Reynolds Holding, *41 Awards in Suits Against Drug House*, S.F. CHRON., May 25, 1991, at A15; Reynolds Holding, *Rooming House is a "Nuisance"*, *Neighbors Tell Court in S.F.*, S.F. CHRON., May 15, 1991, at A15; Patricia Jacobus, *Oakland Goes After Gang with Lawsuit: Nuisance Law Used Against "B Street Boys"*, S.F. CHRON., May 21, 1994, at A17; *Landlord Held Liable for Tolerating Gangs*, L.A. TIMES, Oct. 27, 1990, at B2; John H. Lee, *Landlord Appeals Ruling for Tenants*, L.A.

A common denominator of the widely publicized cases is their genesis in the small claims court. The small claims court has provided a form of alternative dispute resolution in the United States for almost a century.¹³⁴ Small claims cases offer an appealing alternative to class action suits because the system is inexpensive, informal, and expedient.¹³⁵ The small claims court system was originally designed to handle cases involving small amounts of money or plaintiffs who were too poor to sue under the existing judicial system.¹³⁶ The system strove to simplify court procedures, eliminate lawyers, and grant some bargaining power to poor plaintiffs.¹³⁷ Like class actions suits,¹³⁸ small claims court cases offer an arena for community organizing and empowerment.¹³⁹ Unlike class actions, however, small claims cases promote self-representation. This in turn allows plaintiffs to feel more in control of their case, which is important to most litigants.¹⁴⁰

TIMES, Oct. 19, 1990, at B8; George Markell, *Neighbors Win Suit Over Crime: SF Housing Authority Ruled Liable for Assaults Near Project*, S.F. CHRON., Nov. 2, 1990, at A2; Torri Minton, *The \$4 Solution: A Plan to Get Drugs Out of Your Neighborhood*, S.F. CHRON., Oct. 11, 1990, at B3; *Residents Near Crime-Ridden SF Housing Project Win Claim*, S.F. CHRON., May 1, 1990, at A9; David A. Self, *Wrong Way to Safe Streets: Small-Claims Crusade in Oakland Blames Crime Wave on Landlords*, L.A. DAILY J., July 19, 1993, at 6; Daryl Strickland, *Oakland Fights Back in Small Claims Court*, SEATTLE TIMES, Dec. 25, 1994, at B2; Janet Wells, *New Weapon in Drug War*, S.F. CHRON., Dec. 27, 1993, at A15; Maitland Zane, *Landlady Fights Judgment on Boarded-Up Crack House*, S.F. CHRON., Feb. 10, 1990, at A4; Maitland Zane, *Neighbors Sue Owner of Tenderloin Hotel*, S.F. CHRON., Nov. 24, 1994, at A33.

134. Susan E. Raitt et al., *The Use of Mediation in Small Claims Court*, 9 OHIO ST. J. ON DISP. RESOL. 55 (1993). See generally Austin Sarat, *Alternatives in Dispute Processing: Litigation in Small Claims Court*, 10 LAW & SOC'Y REV. 339 (1976) (presenting a case study of small-claims court cases).

135. Raitt et al., *supra* note 134, at 55.

136. See Barbara Yngvesson & Patricia Hennessey, *Small Claims, Complex Disputes: A Review of the Small Claims Literature*, 9 LAW & SOC'Y REV. 219, 222-24 (1975). See also Andrew D. Freeman & Juli E. Farris, *Grassroots Impact Litigation: Mass Filing of Small Claims*, 26 U.S.F. L. REV. 261 (1992) (comparing class-action suits with mass *pro se* small-claims suits).

137. See Yngvesson & Hennessey, *supra* note 136, at 222-24.

138. See Lynn Mather, *Conclusion: The Mobilizing Potential of Class Actions*, 57 IND. L.J. 451, 451 (1982) (providing examples of attempts to promote change through class action suits).

139. See Freeman & Farris, *supra* note 136, at 261-62 (comparing class action and small claims suits).

140. See generally, Tom R. Tyler, *What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 LAW & SOC'Y REV. 103, 121

During the summer of 1994, Missouri passed a new law which allows property owners of nearby buildings to sue owners of nuisance properties in a small claims court.¹⁴¹ The law defines a nuisance property as one that "adversely affects the property values of a neighborhood" because certain acts or omissions by the owner have caused it to be in a "deteriorated condition, not consistent with the general neighborhood."¹⁴² The law grants such a cause of action to property owners who live within a reasonable distance of an alleged nuisance property.¹⁴³ Claimants may sue for the diminution in property value caused by the nuisance, provided that they have given the owner a reasonable opportunity to correct the alleged nuisance.¹⁴⁴

This law provides a useful tool for individuals to help neighborhood associations and aldermen fight the owners of deteriorated properties.¹⁴⁵ However, the history of nuisance law shows that public nuisance laws were intended to combat certain illegal uses of property which threaten public health, morals, safety, or peace.¹⁴⁶ Residents may want to sue their neighbors for allowing property to become a haven for drug dealers and organized criminals, rather than for allowing trash to build up on the property.¹⁴⁷ Furthermore, considering the modern trend in expanding

(1988) (reporting results of study that indicates that legal clients often care most about the process by which their problems are resolved).

141. Act of July 12, 1994, 1994 Mo. Laws 354, 357 (nuisance action for deteriorated property) (codified at MO. REV. STAT. § 82.1025 (1994)).

142. MO. REV. STAT. § 82.1025 (1994). These acts and omissions include: "neglect, abandonment, failure to repair after a fire, flood or some other damage to the property or because the resident of the property allows clutter on the property such as abandoned automobiles, appliances or similar objects." *Id.*

143. *Id.* Representative Patrick Dougherty, sponsor of the new Bill, understands "reasonable distance" to mean "within a few blocks of the nuisance property." Jim Rygelski, *New Law to Battle Nuisance Property*, SOUTH CITY J. (St. Louis), Sept. 14, 1994, at 1A, 5A.

144. MO. REV. STAT. § 82.1025 (1994). Because plaintiffs may receive only up to \$1,500 in small claims court, MO. REV. STAT. § 482.305 (1994), the law "isn't going to be a money-maker for the people bringing the suit, . . . [i]ts purpose is to get people to clean up their property." Rygelski, *supra* note 143, at 5A.

According to the law, the "reasonable opportunity" to correct shall not exceed forty-five days. MO. REV. STAT. § 82.1025 (1994).

145. Rygelski, *supra* note 143, at 5A. The law particularly helps to fight absentee landlords. *Id.*

146. See *supra* notes 40-48 and accompanying text.

147. See, e.g., *Snelling*, 793 S.W.2d at 232.

landlord liability, the physical deterioration of property is no longer the sole reason for which private citizens may wish to sue neighboring absentee landlords.¹⁴⁸ The Missouri legislature therefore should expand the meaning of nuisance in this law to include not only the physical deterioration of a property, but also the continual criminal activity occurring on the property. A nuisance property, after all, is not simply a dilapidated building.

Missouri's public nuisance abatement laws include criminal activity in their definition of nuisance.¹⁴⁹ The same definition should apply to laws regulating nuisances in small claims cases. If residents have sufficient evidence of drug-dealing or criminal street-gang activity occurring on a neighboring property in their community, the landlord or property owner who knows or should know of such activity must be held liable to these neighbors. When neighbors join together against a particular property owner, their odds of success will significantly increase.

Furthermore, recovering the diminution in property value is not always a sufficient remedy.¹⁵⁰ The *Lew* court allowed such plaintiffs to recover damages for emotional distress.¹⁵¹ The small claims courts of Missouri should grant such damages to concerned Missouri residents in similar situations who suffer mental injuries due to crime in their neighborhoods. Allowing tenants and neighbors to collect such damages will provide an incentive to landlords and other landowners to take reasonable measures to manage their properties so as to prevent criminal activity from occurring.¹⁵²

B. *Amendment to Missouri Nuisance Abatement Statutes*

Often neighbors do not want compensation for the diminution of property value or mental distress.¹⁵³ Rather, many neighbors would

148. See *supra* part III.

149. See *infra* notes 153-56 and accompanying text (discussing nuisance abatement laws).

150. See, e.g., *Lew v. Superior Court*, 25 Cal. Rptr. 2d 42, 46 (Cal. Ct. App. 1993).

151. *Id.*

152. See *supra* notes 115-20 (discussing civil RICO and plaintiffs as private attorneys general).

153. See *Freeman & Farris, supra* note 136, at 265 n.12. Diminution in value claims are often undesirable because, among other problems, they involve complex valuation issues and usually require expert real estate appraisals for each piece of property. *Id.*

prefer to have the nuisance building closed down. However, because public nuisance is an administrative claim, brought on behalf of the entire community, individual neighbors normally do not act to abate a public nuisance.¹⁵⁴ When street crime is occurring in a neighborhood, Missouri residents may not sue under a nuisance abatement statute, even if a pattern of criminal activity has been occurring in close proximity to their home.¹⁵⁵ Only the attorney general, circuit attorney, or prosecuting attorney may prosecute a suit to enjoin the public nuisance in Missouri.¹⁵⁶

The criminal activities which constitute a nuisance in Missouri include prostitution,¹⁵⁷ selling or manufacturing intoxicating liquor without a permit,¹⁵⁸ and keeping, manufacturing, or selling controlled substances.¹⁵⁹ Missouri law also states that any building which is used by a criminal street-gang in a pattern of criminal activity is a public nuisance.¹⁶⁰ This statute allows for a suit in equity to enjoin the public nuisance caused by such street-gang activity.¹⁶¹ It also allows for a so-called "padlock" order, which prohibits access to the property by anyone for any reason, for a period not to exceed one year.¹⁶²

154. Self-help abatement are normally not permissible in the case of public nuisances. See *supra* notes 35-38 and accompanying text for a discussion of public nuisance. See also *supra* note 39 and accompanying text (discussing the public nuisance tort). Residents with "special damages" may make such civil claims, but they may not act to abate a nuisance without legal process. *Id.*

155. Glesner, *supra* note 40, at 728-29. See, e.g., MO. REV. STAT. § 195.130.2 (1994) (permitting criminal prosecution, but not civil claims, for public nuisance properties). But for a discussion of private civil suits for public nuisances, see *supra* notes 38-39 and accompanying text.

156. See, e.g., MO. REV. STAT. § 578.430.2 (1994) (authorizing attorney general, circuit attorney, or prosecuting attorney to seek to enjoin public nuisances).

157. MO. REV. STAT. § 567.080 (1994).

158. MO. REV. STAT. § 311.740 (1994).

159. MO. REV. STAT. §§ 195.130-195.253 (1994).

160. MO. REV. STAT. § 578.430 (1994).

161. MO. REV. STAT. § 578.430.2 (1994). Only prosecutors may bring such suits. *Id.*

162. *Id.* The relevant portion states:

If the court finds that the owner of the room, building, structure or inhabitable structure knew that the premises were being used for criminal street gangs in a pattern of criminal street gang activity, the court may order that the premises shall not be occupied or used for such period as the court may determine, not to exceed one year.

This statute, by granting a remedy only when a "pattern" of criminal street-gang activity exists, allows for varying interpretations as to what constitutes a pattern.¹⁶³ The statute is devoid of any guidelines to help determine what may establish such a pattern of activity.¹⁶⁴ Therefore, the broad language of the Missouri statute may cause problems of proof for the attorney general, circuit attorney, or prosecuting attorney acting to abate the nuisance. Fortunately, however, cases throughout the United States have established that various kinds of evidence may be used to prove that a property is a public nuisance.¹⁶⁵ Such evidence may include the character of visitors,¹⁶⁶ the general reputation of the place,¹⁶⁷ evidence of noise and fighting,¹⁶⁸ and frequent arrests on the premises.¹⁶⁹ Of course, the more witnesses who testify that criminal activity is occurring, the easier it is for public officials to obtain enough evidence to prove a pattern exists.

Neighbors are more likely to spot and obtain evidence concerning crime in a given community than are the local city officials.¹⁷⁰ For this reason, some states have set up administrative systems in which citizens can alert government officials about a nuisance property in their neighborhood.¹⁷¹ For example, a Texas statute allows the district

Id. Padlock orders are also authorized against drug properties, pursuant to MO. REV. STAT. § 195.130.2 (1994), houses of prostitution, *id.* § 567.080.2, and places where illegal alcohol is made or sold, *id.* § 311.750.2.

163. The federal RICO statute, discussed above, also requires a pattern of criminal activity. Such language has created problems of interpretation since its inception. *See supra* notes 106-09 and accompanying text (discussing RICO's pattern requirement).

164. MO. REV. STAT. § 578.430 (1994).

165. *See infra* notes 166-69 and accompanying text.

166. *See, e.g., City of New York ex rel. Redlich v. Goldman*, 356 N.Y.S.2d 754, 757-58 (N.Y. Civ. Ct. 1974) (including reputation of visitors as evidence of unlawful activities on the premises).

167. *See, e.g., State ex rel. Cox v. Taft*, 100 S.E.2d 161, 163-64 (W. Va. 1957) (allowing evidence regarding the general reputation of the premises to establish defendant's knowledge of a public nuisance).

168. *See, e.g., Commonwealth v. Tick, Inc.*, 233 A.2d 866, 867-68 (Pa. 1967) (allowing evidence of "loud, boisterous and unseemly noises" in suit to enjoin bar).

169. *See, e.g., State ex rel. Patterson v. Motorama Motel Corp.*, 307 N.W.2d 349, 352 (Mich. Ct. App. 1981) (holding that arrests must be repeated or continuing to establish proof that prohibited conduct was habitual).

170. MANN & BLAKEMAN, *supra* note 14, at 2/5.

171. Glesner, *supra* note 40, at 729.

attorney to call public meetings in order to identify public nuisances.¹⁷² Once a request for such a meeting is signed by a specified percentage of the registered voters in an area, the district attorney may authorize a meeting.¹⁷³ The owner of the alleged nuisance property is personally served with notice prior to the meeting.¹⁷⁴ At the meeting, interested and concerned neighbors may voice their complaints about an alleged public nuisance property in front of the owner.¹⁷⁵ After the meeting, the district attorney may begin proceedings to abate the nuisance if she determines that sufficient evidence exists.¹⁷⁶

Instead of public meetings, a Florida statute provides for the creation of local administrative boards.¹⁷⁷ These boards receive neighbors' complaints and conduct hearings concerning alleged public nuisances.¹⁷⁸ The administrative boards have the authority to declare a property to be a public nuisance,¹⁷⁹ to prohibit further operation of the

172. *Id.* See also TEX. CIV. PRAC. & REM. CODE ANN. § 125.042(a) (West Supp. 1995).

173. *Id.* § 125.042(a)(1). A city attorney or county attorney "having geographical jurisdiction of the place that is the subject of the voters' complaints" may also authorize such a meeting. *Id.* § 125.042(a). The written request for such a meeting must be signed by at least "(1) 10 percent of the registered voters of the election precinct in which the public nuisance is alleged to exist or is alleged to be likely to be created; or (2) 20 percent of the voters of the adjacent election precinct." *Id.* § 125.042(a)(1),(2).

174. *Id.* § 125.043(2). General notice of the "purpose, time, and place of the meeting" may also be posted "at either the county courthouse of the county or the city hall of the city in which the place that is the subject of the complaints is located" as well as published "in a newspaper of general circulation published in that county or city . . ." *Id.* § 125.043(1).

175. *Id.* § 125.042(a).

176. *Id.* § 125.044(a). The district attorney, city attorney, or county attorney may initiate proceedings against owners of nuisances only "on finding . . . that a public nuisance exists or is likely to be created." *Id.* In such an abatement proceeding:

(1) proof that acts creating a public nuisance are frequently committed at the place is prima facie evidence that the owner and the operator knowingly permitted the acts; and

(2) evidence that persons have been convicted of offenses involving acts at the place that create a public nuisance is admissible to show knowledge on the part of the owner and the operator that the acts occurred.

Id. § 125.044(b)(1),(2).

177. FLA. STAT. ANN. § 893.138 (West 1994). The statute is applicable to illegal drug-related public nuisances and street-gang activities. *Id.* § 893.138(b)-(d).

178. *Id.* § 893.138(2).

179. *Id.* § 893.138(3).

premises for one year,¹⁸⁰ and/or to seek temporary and permanent injunctions from the courts.¹⁸¹

Using these Texas and Florida statutes as models, the Missouri legislature should adopt a similar administrative system. Such a system would benefit both city officials and the residents in a Missouri community. It would allow city officials to obtain sufficient evidence to prosecute and abate nuisances. At the same time, this system would empower the neighboring residents to act as private attorneys general to fight crime in their communities.¹⁸² Only when public officials work together with individuals in the affected community may the crime associated with nuisance properties in Missouri begin to dissipate.

VI. CONCLUSION

The recent increase in drug dealing activities and criminal street gangs has created a growing need for the protection of neighborhood residents. Public officials cannot combat this surge in crime on their own; community involvement is necessary. The proposed amendments to Missouri law will allow residents to help fight crime in their neighborhoods. Such improvements in community organization and empowerment will prove to be invaluable to the state's efforts to eliminate drug dealing activities and dismantle criminal street gangs on a local level.

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180. *Id.* § 893.138(3)-(4).

181. *Id.* § 893.138(6).

182. The term "private attorneys general" was used by Judge Kleinfeld, who dissented in *Oscar* and argued for an expansion of the private RICO claim for injured tenants. *See supra* notes 117-21 and accompanying text. I argue for similar empowerment for tenants and neighbors to fight crime on a local and state level, rather than on the federal level.

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