Father Constitution, Tell the Police to Stay on Their Own Side: Can Extra-Jurisdictional Arrests Made in Direct Violation of State Law Ever Cross the Fourth Amendment's "Reasonableness" Line?

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FATHER CONSTITUTION, TELL THE POLICE TO STAY ON THEIR OWN SIDE: CAN EXTRA-JURISDICTIONAL ARRESTS MADE IN DIRECT VIOLATION OF STATE LAW EVER CROSS THE FOURTH AMENDMENT'S "REASONABLENESS" LINE?

INTRODUCTION: SOCIETY'S PROTECTION VERSUS INDIVIDUAL FREEDOM AND PERSONAL PRIVACY

There are two sides to every story. In the context of an arrest, this maxim is customary. First, there is the arrestee:

Being arrested and held by the police, even for a few hours, is for most persons, awesome and frightening. Unlike other occasions on which one may be authoritatively required to be somewhere, or do something, an arrest abruptly subjects a person to constraint, and removes him to unfamiliar and threatening surroundings. Moreover, this exercise of control over the person depends not just on his willingness to comply with an impersonal directive, such as a summons or a subpoena, but on an order which a policeman issues on the spot and stands ready then and there to back it up with force.¹

Then, there is the police officer:

The police have a difficult, dangerous and often thankless job. Trying to combat crime and violence and protect the public without losing the public's trust is a formidable challenge.²

Consider this situation: Officer Green is one of two police officers serving and protecting the small farming community of Ruraltown. Her duties include traffic control and citation, especially on holidays such as the Fourth of July and Memorial Day, and during the local high school's homecoming parade. Officer Green converses with the local public, all of whom she knows personally. One Friday night, while on duty, Officer Green bumps into Mrs. Innocent, a friend who owns a house in Ruraltown but works in Colossal, a large city about thirty minutes north. Innocent informs Green about a man she witnessed dealing hard drugs in Ruraltown and provides Green with a license plate number. Green conducts some research on the car's

owner and retrieves the alleged dealer’s name and personal address. The car is registered in Colossal. She decides to pursue the offender, armed with probable cause to arrest.

Officer Green drives outside of her jurisdiction to the suspected dealer’s residence. Although she knows that she is not authorized by state law to make an arrest in Colossal, Green is armed with probable cause and wants to end the drug corruption within her town. On her way to the accused dealer’s residence, she notices that the street is lined with houses and apartments, no streetlights, and people congregating on street corners. Green pulls in front of the address and sees one light on through a front window. Peering into the house, she notices many suspects, bricks of marijuana, baggies of white powder, and piles of cash on a table. She decides to effectuate a probable cause arrest. She parks her car down the street and sneaks around the house to the front door. Following her jurisdictional policies and procedures, she stands on the left of the door frame and offers a “knock and announce.” When no one responds, Officer Green barges inside of the apartment.

Neither the United States Supreme Court nor any United States Court of Appeals has completely or precisely analyzed whether the Fourth Amendment to the United States Constitution protects a defendant arrested by a police officer unlawfully acting outside of the officer’s territorial jurisdiction.\(^3\) Circumventing a determination of Fourth Amendment “reasonableness,” these courts rely solely on “federalism”;\(^4\) however, some federal appellate courts insinuate that flagrant violations of state extra-jurisdictional arrest\(^5\) statutes can certainly impact the constitutional “reasonableness” of police action.\(^6\) Nevertheless, no federal appellate court has reasoned further and actually balanced the competing Fourth Amendment interests at stake. This Comment is not advocating a bright-line Fourth Amendment rule; nonetheless, before holding that a flagrant violation of state extra-jurisdictional arrest law does not violate a defendant’s Fourth Amendment rights, a sitting court should examine certain factors, conduct a Fourth Amendment balancing test,\(^7\) examine the social policies

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3. See infra notes 117-169 and accompanying text.
4. Id.
5. In the context of this Comment, extra-jurisdictional arrest is defined as the situation when an officer acts in his or her official capacity outside of his or her legislatively mandated territorial boundary.
6. See infra notes 117-169 and accompanying text.
behind these violated state extra-jurisdictional arrest statutes, and decide whether a decision based on "federalism" alone promotes a fair and just society, judicial system, or constitution.

Many federal courts hold that, upon a showing of probable cause, an extra-jurisdictional arrest is constitutionally reasonable under the Fourth Amendment. Is justice served by this reasoning? Democratic society at large creates and revises law, adjusting it to new social attitudes and norms. When law must change, society speaks through representatives sitting in local, state, and federal governments. Society codifies many well established common-law doctrines germane to extra-jurisdictional arrest. Abundant authorities exist authorizing law enforcement officers to facilitate extra-jurisdictional arrests. Other authorities define exceptions that protect police officers from civil liability or from constitutionally unreasonable conduct for mistakes that occur during the extra-jurisdictional arrest procedure. These exceptions include: (1) the doctrine of citizens' arrest; (2) the doctrine of hot pursuit; (3) the existence of exigent circumstances; (4) a defendant's consent to arrest; (5) governmental qualified immunity; and (6) the exceptions to the exclusionary rule. If a state police officer effectuates a probable cause arrest, but directly violates a state extra-jurisdictional arrest statute, a sitting court should, in certain circumstances, balance Fourth Amendment interests. Furthermore, a sitting court should consider statutory history and legislative

8. See Abbott v. City of Crocker, 30 F.3d 994 (8th Cir. 1994).
9. Id.
10. See infra notes 194-220 and accompanying text (comparing the original construction of the Fourth Amendment to modern-day Fourth Amendment construction).
11. The opposite is also true. When law should not change, society speaks by keeping those representatives with similar political views in office. If society determines law must change, society's voice is heard during re-election.
13. Id.
14. See infra notes 78-116 and accompanying text.
15. Id.
16. Id. See also Lina D. Johnson, In Hot Pursuit, 26 How. L.J. 961 (1983) (also labeled "high pursuit" or "fresh pursuit").
17. See infra notes 78-116 and accompanying text.
18. Id.
19. Id.
20. See generally Nix v. Williams, 467 U.S. 431 (1984); Brewer v. Williams, 430 U.S. 387 (1977) (These exceptions include: 1) doctrine of inevitable discovery; 2) doctrine of independent source; and 3) the attenuation doctrine).
policy to resolve the constitutional "reasonableness" of the arrest.\textsuperscript{21} This is most warranted when an officer arrests in blatant violation of statutory authority and no other statutory or common law exception applies. Although the United States Constitution is not the enforcer of state law, a majority of decisions completely ignores the Fourth Amendment "reasonableness" of an officer's conduct when disposing of constitutional claims based on unlawful, and perhaps "unreasonable," extra-jurisdictional arrest.\textsuperscript{22} As California Supreme Court Justice Janice R. Brown stated in \textit{People v. McKay}: "Fourth Amendment analysis has attained a kind of perverse, irrational fixity: probable cause equals reasonableness."\textsuperscript{23}

This Comment touches on the common-law and statutory exceptions to extra-jurisdictional arrest, but an in-depth discussion of each is beyond its scope. Rather, this Comment will examine police extra-jurisdictional arrest authority through the "reasonableness" doctrine of the Fourth Amendment.\textsuperscript{24} Part II follows a police officer's jurisdictional arrest authority from early common law,\textsuperscript{25} through the establishment of an American police force,\textsuperscript{26} and into modern-day police authority.\textsuperscript{27} Part II also presents a split in the federal circuits concerning the "reasonableness" of an unlawful extra-jurisdictional arrest\textsuperscript{28} and each court's reasoning,\textsuperscript{29} focusing on a strong dissent from the United States Court of Appeals for the Eighth Circuit.\textsuperscript{30} Part III analyzes constitutional "reasonableness" as critiqued by leading Fourth

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\textsuperscript{21} See infra notes 221-257 and accompanying text.
\textsuperscript{22} See infra notes 117-169 and accompanying text.
\textsuperscript{23} People v. McKay, 41 P.3d 59, 83-84 (Cal. 2002). As Justice Janice R. Brown noted in dissent:

Only by insisting probable cause and reasonableness are synonymous can courts avoid the socially costly consequences of the exclusionary rule. For this false peace, we pay too high a price. We are asked to surrender our right to be protected from unreasonable intrusions. Ironically, the severe sanction of the exclusionary rule has not discouraged unreasonable searches; it has, instead, shrunk the constitutional protection against them . . . . Looking beyond probable cause and viewing reasonableness as a mandate of independent vitality restores some measure of constitutional balance. Probable cause and reasonable conduct are not the same thing.

\textit{Id.} at 84 (Brown, J., dissenting).
\textsuperscript{24} See infra notes 170-355 and accompanying text.
\textsuperscript{25} See infra notes 34-65 and accompanying text.
\textsuperscript{26} See infra notes 66-77 and accompanying text.
\textsuperscript{27} See infra notes 78-116 and accompanying text.
\textsuperscript{28} See Pasiewicz v. Lake County Forest Pres. Dist., 270 F.3d 520 (7th Cir. 2001); Abbott v. City of Crocker, 30 F.3d 994 (8th Cir. 1994); Ross v. Neff, 905 F.2d 1349 (10th Cir. 1990).
\textsuperscript{29} See infra notes 117-169 and accompanying text.
\textsuperscript{30} See infra notes 165-169 and accompanying text; Abbott, 30 F.3d at 999 (Arnold, J., dissenting).
Amendment scholars.³¹ Part III also dissects and analyzes the current state of federal constitutional jurisprudence showing that federal courts, including the United States Supreme Court, take into account compliance with state law when deciding whether some governmental actions are constitutionally "reasonable" under the Fourth Amendment.³² Finally, Part IV weighs the competing Fourth Amendment interests when a direct violation of state extra-jurisdictional arrest law occurs and examines the social policy behind these violated statutes.³³

II. GENERAL BACKGROUND ON POLICE EXTRA-JURISDICTIONAL ARREST DISCRETION

A. Police Warrantless Arrests at Common Law

At common law, basic policies governed a police officer executing a warrantless arrest:

For a misdemeanor, neither an officer nor a private person may arrest. For breach of the peace, an officer or a private person may arrest or a private citizen may arrest to prevent or terminate the crime, or immediately after its commission. For treason or felony, an officer may arrest if he has reasonable belief both in the commission of the crime and in the guilt of the arrestee; a private person may arrest if the crime has actually been committed, and if he has reasonable belief in the guilt of the arrestee.³⁴

Before establishing a recognized police official or police force, society expected every common and able-bodied citizen to join in a felony pursuit upon: (1) the "hue and cry" of a felony commission; (2) the appointment to a posse comitatus; or (3) the appointment to a group of townsman or a "tun" established to keep a respective town safe from crime.³⁵ As populations grew in England, groups of "tuns" conglomerated and formed "tythings"³⁶ in order to protect citizens from criminal activity, manage intertown problems and emergencies, and

³¹. See infra notes 194-220 and accompanying text.
³². See infra notes 225-355 and accompanying text.
³³. See infra notes 356-388 and accompanying text.
³⁵. David R. Struckhoff, The American Sheriff 4-5 (1994). A "tun" was a group of townsman and was representative of the modern word "town." Id. at 4. These groups were established even before a police official was formally recognized. Id. The King expected each tun to solve its own problems within its respective areas. Id. Because of individual movement, however, inter-tun (or town) problems arose because of individual action. Id.
³⁶. Id. Groups of ten families were responsible for each town. Struckhoff, supra note 35, at 4-5.
raise the “hue and cry” under appropriate circumstances. Groups of ten tythings merged together to form “hundreds.” Within each hundred, the King appointed a “reeve” to serve primarily as a tax collector and law enforcer.

As time progressed, the King divided land into “shires.” Within each shire, the King appointed head law and tax enforcement officials including sheriffs, bailiffs, constables, watchmen and other King’s law enforcers. These officials’ duties and rights to arrest were similar to those of common citizens. However, the King af-

37. *Id.*
38. *Id.* at 4.
39. *Id.*
40. *Id.* at 4-5.
41. Edward C. Fisher, *Laws of Arrest* 24 (1967). The sheriff was the chief executive officer and conservator of peace in his shire or county. *Id.* At common law, the sheriff was known as the “shire’s reeve.” *Id.* A reeve was a feudal administrative officer in charge of estate order. *Id.* Lord of each manor appointed each sheriff respectively. *Id.* When the English feudal system broke apart, the land divided into shires and a reeve was appointed to each shire. *Id.* His duties were the same but now he was the King’s top law enforcement official in each shire. Fisher, supra, at 24. The territorial jurisdiction of the sheriff acting in his official capacity was limited to his respective shire. *Id.*
42. *Id.* at 26. The common law bailiff was an agent appointed by the feudal lords to perform duties such as collecting rents and assisting the reeve to maintain order on each manor. *Id.* He later became known as the “conservator of the peace” and assisted the sheriff in maintaining order on each respected shire. *Id.* The bailiwick, or the “bailiff’s village,” was the territory within which each bailiff might exercise his authority. *Id.* The territorial jurisdiction of the bailiff acting in his official capacity was limited to his respective bailiwick. Fisher, supra note 41, at 24.
43. *Id.* The constable, also known as “Master of the Horse,” was the highest ranking King’s official at common law. *Id.* He was in charge of the military and some judicial functions. *Id.* The constable was the highest ranking law enforcement official in a parish or township and was assisted by the night-watch. *Id.* His duties included dealing with disturbances and disorders in his respective parish. *Id.*
44. See Fisher, supra note 41, at 26. The watchman was a guard who, most likely at night, kept watch in each city. *Id.* His responsibilities included guarding the property of each citizen. *Id.* The watchmen were ineffective. *Id.* They were mostly “old men ... dozing in ... watch-box[es] in the interviews between crying the hours and when ... moving.” *Id.* However, they were used because of the inadequately staffed sheriff and constable system of law enforcement. *Id.* The watchmen assisted the constable of each parish or township and were given the arrest authority to take night watchers into custody until morning. Fisher, supra note 41, at 26. The watchman is the progeny to society’s modern police officer. *Id.* at 28. See also Hall, supra note 34, at 582.
45. See Fisher, supra note 41, at 26 (also including coroners and beadles).
46. See Wilgus, supra note 34, at 673-74 (citing 9 Halsbury’s Laws of England 246-48 (1922-1923)); see also Hall, supra note 34, at 566-67. As summarized by Hall:

For a misdemeanor, neither an officer nor a private person may arrest. For breach of the peace, an officer or a private person may arrest to prevent or terminate the crime, or immediately after its commission. For treason or felony, an officer may arrest if he has reasonable belief both in the commission of the crime and in the guilt of the arrestee; a private person may arrest if the crime has actually been committed, and if he has reasonable belief in the guilt of the arrestee.
forded his law enforcers greater rights when arresting based on reasonable suspicion of a felony, misdemeanor, or breach of the peace.\textsuperscript{47} In certain situations, the King’s law enforcers: (1) had a duty to act; (2) were afforded some variation of official immunity; and (3) only had a specific territory in which to exercise their official power.\textsuperscript{48}

A common-law police official differs from today’s modern police force or individual officer. Common-law police officials were common, ordinary, and private citizens compelled into service as tithingmen or watchmen.\textsuperscript{49} In England, the first recognized law enforcement official was the “conservator of the peace.”\textsuperscript{50} English society required these involuntary law enforcers to act in certain situations and afforded the position more legal protection.\textsuperscript{51} Compulsory police officials had the same right to arrest as individual citizens when acting outside of their respective town or shire\textsuperscript{52} and society expected

\textit{Id.} Therefore, the common law difference between an officer and a private citizen was whether a felony had in fact been committed. An officer could arrest, with immunity, based on reasonable suspicion that an offender committed a felony. A private citizen could not arrest, unless the offender actually committed the felony. However, common citizens were required to assist common law constables and other law enforcement officials at the “hue and cry” of the commission of a felony or when a \textit{posse comitatus} was formed. \textit{See also} Eric H. Monkkonen, \textit{Police in Urban America, 1860-1920}, 32 (1981).

\textsuperscript{47} See Hall, \textit{supra} note 34, at 567.

\textsuperscript{48} \textit{Id.} For example, the sheriff had to own property and reside within the county (or shire) where he was in charge. \textit{See also} Struckhoff, \textit{supra} note 35, at 23.

\textsuperscript{49} See Hall, \textit{supra} note 34, at 580. Not all citizens were “compelled” into serving as a police official. \textit{Id.} Teachers, physicians, the poor, and the old were usually excused. \textit{Id.} This position was unpaid. \textit{Id.}

\textsuperscript{50} See Fisher, \textit{supra} note 41, at 21. The conservator of the peace was any citizen charged with maintaining the King's peace. \textit{Id.} at 22. They used to have minimal judicial powers for the issuance of warrants; however, these judicial powers were passed onto “justices of the peace.” \textit{Id.} This gave rise to what is comparable to today's modern police officer or sheriff. \textit{Id.} at 22-23. Justices of the peace were appointed by the King and had the authority to issue warrants and writs and try certain types of criminal cases. \textit{Id.} at 23. The creation of the justice of the peace “was intended to correct the evils of a former system under which the sheriff acted as judge as well as law enforcement officer.” \textit{Id.}

\textsuperscript{51} See Fisher, \textit{supra} note 41, at 21. Police officials were persons entrusted with authority by law and were charged with neglect of a duty for failing to act in certain circumstances. \textit{Id.} “Their actions . . . are not arbitrary, but necessary, duties—not permissions—and under severe punishments in their neglect thereof.” \textit{Id.} This duty to act was a distinguishing factor between the common citizens’ right to make an arrest and the police officials’ duties.

\textsuperscript{52} \textit{Id.} at 22. \textit{See also} Hall, \textit{supra} note 34, at 579. As stated by Hall:

Paramount is the fact that . . . police duties were the duties of every man. Systems of universal interguardianship; hue and cry that obligated all to cease work and join immediately in pursuit of an offender; the liability of the hundred to answer in damages for loss sustained by victims of criminal attack; and numerous law protective associations—all of these, and a web or related, interlocking activities and organizations, that enlisted the services of a great majority of the men in the realm, provide the background against which the contemporary police force must be placed.

\textit{Id.}
every citizen to "join the chase" upon the "hue and cry" of a felony commission. However, the ability to arrest without a warrant only applied to felonies. The law afforded common citizens some, but not all, of these same rights for warrantless arrests. The use of compelled police duty led to corruption through bribes and other manipulations. Society and law remedied these abuses of authority by adapting law enforcement rights and duties to meet social ends. Consequently, English society established the first official, professional police force, and others followed thereafter.

53. Hall, supra note 34, at 579.
54. See Wilgus, supra note 34, at 673.
55. Id. at 679. A duty to arrest those who were committing felonies was imposed on anyone who knew that such felony was imminent or actually being committed. Id.
56. Id. at 687. A private person must prove that: (1) the suspected offender was charged with a felony that actually took place; and (2) there were reasonable grounds to believe that the offender was guilty of that felony. Id. As noted by Wilgus:

The only question of law in the case is whether a constable having reasonable cause to suspect a person has committed a felony may detain such person until he can be brought before a justice of the peace to have his conduct investigated. There is this distinction between a private individual and a constable; in order to justify the former in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that a felony has actually been committed; whereas a constable having reasonable ground to suspect that a felony has been committed, is authorized to detain the party suspected until inquiry can be made by the proper authorities. Id. at 689 (quoting Beckwith v. Philby, 108 Eng. Repr. 585 (1827)) (internal citations omitted). Additionally,

If a felony were actually committed a person might be arrested without a warrant by any one, if he were reasonably suspected of having committed the felony; and a constable could go further if he had reasonable ground for supposing a certain person committed the supposed felony, he might arrest him though no felony had actually been committed.

Wilgas, supra note 34, at 689 (quoting Hadley v. Perks, L.R.1 Q.B. 444, 456 (1866)) (internal citations omitted). This is because police officials had the right to arrest when there was reasonable suspicion of a felony committed and the officer had reasonable suspicion that the accosted was the one who committed said felony. Id.
57. See Hall, supra note 34, at 580 ("Protests by grand juries became common. Complaints of bribery and misuse of office by constables nevertheless accumulated. Dismissal from an office which meant work without pay could provide no deterrent; it would have been welcomed.").
58. Id. at 578 ("To give social meaning to the rules and to the techniques of decision, it is necessary to supply the life-like context of human problems, purposes, and institutions within which the rules functioned.").
59. Id. The first official police force was called the "Bow Street Runners," and was established by the Duke of Newcastle and Henry Fielding. Id. at 580. It was composed of the best thief catchers and was privately financed. Id.
60. Id. at 580-82. John Fielding organized the "Horse Patrol" to patrol and protect roads. Hall, supra note 34, at 580. Then in 1796, the English Parliament passed the "Middlesex Magistrates Bill," which organized seven police offices. Id. at 581. Each police office was staffed by a number of paid constables under the supervision of the magistrates and patrolled a set territory (no more than thirty or forty miles in circumference) based on the population. Id. at 581-82. Each constable was responsible for 18,187 people, based on average population. Id. at 582. Ad-
Newly established police forces assigned police officials to patrol within specific territories. Along with formalizing police forces and officials with, among other things, the establishment of exact police borders, the law officially recognized the common-law doctrines of citizens' arrest and hot pursuit because police officials could not officially arrest outside of their territory. Moreover, society's needs had changed, and citizens no longer had a legal duty to assist in arresting criminals upon the "hue and cry" of an officer or constable.

Beginning in early common law, through the establishment of official police officers and into the subsequent formation of official police forces, all law enforcers generally had a duty to act in their official capacity and within their respective jurisdictions. If a police officer acted outside of his official jurisdiction, he waived any legal protection and acted at his own peril.

**B. Early Police Arrest Authority within the United States**

At the time of the framing of the United States Constitution, and even before the adoption of the Bill of Rights, England had established a system of official law enforcers, but had not yet established the first official police force. The American Colonies adopted the English philosophy of law on arrest. The colonies established townships and, as in England, constables and citizens patrolled their respective territories. Within these townships, constables patrolled...
geographical precincts. For example, English “shires” composed the Virginia Colony, and the King appointed a sheriff to perform the same duties as his English counterparts. Because of the adoption of the English police system, the early American police structure had three elements: (1) limited authority; (2) decentralization; and (3) fragmentation. The framers of the United States Constitution were unfamiliar with official police forces, and most likely considered the English police official the model for the early American police official—with the same jurisdictional rights—but without the broad use of police discretion through the general warrant. For example, the closest police force in America during the framers’ era was the “slave patrol,” which patrolled the first police “beat.”

During the Industrial Revolution, strikes and riots led to the need for official, full-time, salaried police forces. In the states, statutes codified the early arrest authority of official police officers and forces. The English common law of arrest comprised the basis of these early statutes. As the population grew and America expanded, police authority again changed to meet socially desirable ends: states codified police territorial arrest jurisdictions.

C. The Extra-Jurisdictional Arrest Authority of Today’s Police Officer

Today, police officers are considered public officers of an entire state and not mere agents of their respective local township or city. Local and state police officials act on behalf of all people in a state, not just those located in their respective jurisdictions. Although states are free to enact laws that are more protective than what the United States Constitution requires, the federal constitution enumer-
ates natural rights greater than the document itself.\textsuperscript{80} All state statutes and local ordinances are balanced against the United States Constitution and, although many state extra-jurisdictional arrest statutes are more restrictive than what the federal constitution requires, extra-jurisdictional arrest statutes are based on common-law doctrines.\textsuperscript{81}

Before continuing, one must understand and appreciate the United States Supreme Court's general position on the use of arrest warrants. Before searching for a defendant in the home of a third party, a police officer must obtain a valid search warrant unless exigent circumstances or consent to arrest exist.\textsuperscript{82} The Fourth Amendment forbids police officers from warrantless and nonconsensual entry into a defendant's home in order to make a felony arrest unless exigent circumstances exist.\textsuperscript{83} Finally, an arrest based on probable cause and effectuated in public does not require an arrest warrant even without exigent circumstances.\textsuperscript{84} Although a public arrest does not require an arrest warrant and can be effectuated on probable cause alone, an arrest may be constitutionally "unreasonable" if an officer violates some explicit statute governing the arrest procedure.\textsuperscript{85}

\textsuperscript{80} See generally McNamara, supra note 1.
\textsuperscript{82} Steagald v. United States, 451 U.S. 204, 221-22 (1981). In Steagald, a third-party informant contacted a police officer and told the officer the whereabouts of a suspected drug trafficker. \textit{Id.} at 206. The officers went to the third-party residence of the informant and, without a search warrant, went inside to effectuate the arrest. \textit{Id.} The Court held that the search for the defendant for arrest in the house of a third party was against the Fourth Amendment, at least without the existence of exigent circumstances or a warrant. \textit{Id.} at 211.
\textsuperscript{83} Payton v. New York, 445 U.S. 573, 602-03 (1980). In Payton, New York detectives arrested the defendant, in his personal residence, armed with probable cause for murder but without an arrest warrant. \textit{Id.} at 576. The arrest was effectuated validly under the laws of New York and the defendant appealed, arguing the New York statute violated the Fourth Amendment. \textit{Id.} at 574-76. Distinguishing United States v. Watson, the Court agreed and held that, absent exigent circumstances, an arrest in a defendant's home violated a defendant's Fourth Amendment rights without an arrest warrant, even if based on probable cause. \textit{Id.} at 590-91.
\textsuperscript{84} United States v. Watson, 423 U.S. 411, 423 (1976). In Watson, an informant told a postal inspector about the defendant who allegedly stole mail. \textit{Id.} at 411. The postal inspector, along with other officers, waited for the defendant at a restaurant and upon a signal arrested the defendant without an arrest warrant. \textit{Id.} at 412-13. The Court held that a warrantless public arrest is valid, even absent exigent circumstances, whether or not "it was practicable to get a warrant [or] whether the suspect was about to flee." \textit{Id.} at 423-24.
\textsuperscript{85} See generally Ross v. Neff, 905 F.2d 1349 (10th Cir. 1990).
Modern society continues to recognize the common-law doctrine of citizens' arrest through state legislation. The doctrine of citizens' arrest generally authorizes a private citizen "to act independently of any public authority under certain circumstances." Generally, the Fourth Amendment does not apply to a private citizen's conduct because there is no direct action by a governmental power. Many courts have held that police officers act only as private citizens when arresting outside of their territorial boundary. Yet, before a citizen's arrest by an extra-jurisdictional officer is valid, it generally must be established that the officer did not use any aspect of the officer's official position when arresting or collecting evidence.

Society also preserves, through judicial opinion and state statute, the common law doctrine of hot pursuit. This doctrine authorizes an

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86. 725 ILL. COMP. STAT. 5/107-3 (2003) (defining when a private citizen may effectuate a legal arrest). According to the statute, "Any person may arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed." Id.


88. Id. at 7-8. However, if the private citizen is acting "for or on behalf of public authority," a court may find sufficient governmental action for the Fourth Amendment to apply. Id. Because of the lack of constitutional limitations on a private citizen's arrest authority, there is a policy that encourages private citizens to act in such a way to protect themselves and others. Id. However, this policy must be weighed against the idea that private citizen's act on their own and there is no protection for their action if they make a mistake. Id. In yesteryear, policy was implemented to discourage citizens from taking advantage of the citizens' arrest statutes. Id. These policies were implemented through state statutes and legislated that a private citizen acts at his or her own peril when making an arrest. Bassiouni, supra note 87, at 7-8. Therefore, if a mistake is made in the arrest, the private citizen can be civilly or criminally liable. Id. However, today many states follow the Model Penal Code, which summarily states that "[a] private person can perform an arrest on reasonable grounds to believe that a felony has been committed, even though not in his or her view or presence, and for a misdemeanor committed in his or her view or presence, excluding a municipal ordinance violation." Id. at 24.


91. See United States v. Santana, 427 U.S. 38, 42-43 (1976) (although a hot pursuit infers a chase, it need not be an extension of "hue and cry" in and about the public streets); Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 298-99 (1967) (Fourth Amendment does not require police officers to delay investigation if it would endanger their lives or the lives of others); Johnson v. United States, 333 U.S. 10, 16 (1948) ("no element of 'hot pursuit' in the arrest of one who was not in flight, was completely surrounded by agents before she knew of their presence, who claims without denial that she was in the bed at the time, and who made no attempt to escape."). See generally People v. Marino, 400 N.E.2d 491 (Ill. App. Ct. 1980); People v. Hutchinson, 361 N.E.2d 328 (Ill. App. Ct. 1977). See also Johnson, supra note 390.

92. 725 ILL. COMP. STAT. 5/107-4(3) (2003) defines "fresh pursuit" as "the immediate pursuit of a person who is endeavoring to avoid arrest." 725 ILL. COMP. STAT. 5/107-15 (2003) mandates when a police official may freshly pursue an offender:
officer to effectuate an arrest outside of the officer's jurisdiction in order to stop a fleeing felon. When determining whether the doctrine of hot pursuit applies, courts normally examine the totality of the circumstances of each case, focusing on the immediacy and continuousness of the pursuit.

Extra-jurisdictional arrests that violate a state statute are valid if exigent circumstances exist. Exigent circumstances include emergency and urgent circumstances leading to a necessary arrest. The Supreme Court has held that the existence of urgent circumstances only validates certain warrantless arrests in cases concerning grave and serious offenses. Exigent circumstances generally exist when the delay

When the fact that a felony has been committed comes to the knowledge of a sheriff or coroner, fresh pursuit shall be forthwith made after every person guilty of the felony, by the sheriff, coroner, and all other persons who is by any one of them commanded or summoned for that purpose; every such officer who does not do his or her duty in the premises is guilty of a Class B misdemeanor.

Id. See Judith V. Royster & Rory Snow Arrow Fausett, Fresh Pursuit onto Native American Reservations: State Rights “To Pursue Savage Hostile Indian Marauders Across the Border,” 59 U. Colo. L. Rev. 191, 239 (1988) (“[T]he right at common law is an extension of the power of police officers to arrest without a warrant for felonies committed in their presence or when they have reasonable grounds to believe that the suspect committed a felony.”).

Id. There are generally three areas where the doctrine is applicable: intrastate fresh pursuit, interstate fresh pursuit, and international fresh pursuit. Within a state, a police municipality generally may not act outside of its own local jurisdiction unless it is expressly authorized to do so by state statute. But the common law doctrine of fresh pursuit was a judicial means of expanding a local police municipality's jurisdiction in order to stop fleeing felons from escaping one jurisdiction and entering another. Generally, there are certain elements that must be established including: (1) the police acted without unnecessary delay in chasing the fleeing felon; (2) the pursuit was continuous and uninterrupted; and (3) the time between the commitment of the crime and the commitment of the pursuit must not be unreasonable given all of the circumstances. Between the states, generally, a state has no power to extend its police authority into a sister state. Officers may only effectuate an arrest of an offender in a sister state when freshly pursuing that offender if state agreement exists. The law governing the validity of the arrest is that of the state where the arrest took place, not the state where the arresting officers original jurisdiction was located. Elements that must be established in order to validate such arrest include: (1) an agreement between the states that authorized an interstate arrest; (2) reasonable grounds that the offender committed a crime; (3) the pursuit must be within a reasonable time after the commission of the crime; (4) continuous and uninterrupted pursuit; and (5) the offender must be fleeing in order to avoid arrest. Finally, the doctrine of fresh pursuit can be incorporated into international cross-jurisdictional arrest authority. The right to arrest an offender across international borders is allowed only if there is an express agreement between the country where the crime occurred and the county where the arrest took place. Other elements of international cross-jurisdictional arrest include: (1) the pursuit must be immediate following the offender's commission of the crime; (2) the pursuit must be continuous without break; and (3) the pursuit must be uninterrupted. 

96. Id. at 751-52.
in obtaining an arrest warrant is overruled by the need for immediate action. The factors a court considers include: (1) the seriousness of the offense; (2) the officer's belief that a suspect is armed and dangerous; (3) probable cause to believe the suspect committed a felony; (4) whether delay could cause the destruction of evidence; (5) whether delay could put the officer's safety at risk; (6) the likelihood that the offender could escape or flee; (7) whether the offense occurred recently; and (8) whether there was any deliberate or unjustifiable delay by the officer in obtaining an arrest warrant. Exigent circumstances support the reasonableness of any arrest; however, exigent circumstances are not dispositive of the issue.

If an offender—or another person with apparent authority—consents to arrest, an officer may legally effectuate a warrantless arrest. Consent to arrest usually occurs in situations in which an officer arrests in a personal residence. An officer making an extra-jurisdictional arrest may obtain consent to arrest as well.

Finally, even if police officers violate a defendant's constitutional rights, qualified immunity may shield them from personal liability. Therefore, although an extra-jurisdictional arrest may be "unreasonable," a police official may be protected from civil liability. Qualified immunity shields an officer from liability if the officer acts in good faith while arresting. The officer has the burden of establishing qualified immunity. The defense applies to both warrant-supported and warrantless arrests. For the defense to apply to a warrantless arrest, the officer must establish that "a reasonable officer possessing the same information as the arresting officer would believe his or her conduct was lawful," regardless of whether probable cause to arrest existed. Moreover, an officer may obtain official immunity if a reasonable officer would not have known that clearly established

97. 5 AM. JUR. 2D Arrest § 122 (2002).
98. Id.
99. Courts may not uphold a probable cause warrantless arrest when exigent circumstances exist because the arrest may be "unreasonable" under the Fourth Amendment. See generally Welsh, 466 U.S. at 740; Jeffrey Kuras et al., Warrantless Searches and Seizures, 90 GEO. L.J. 1130, 1157-66 (2002).
100. See generally 5 AM. JUR. 2D Arrest §124 (2002).
101. Id.
102. Abbott v. City of Crocker, 30 F.3d 994 (8th Cir. 1994).
103. 5 AM. JUR. 2D Arrest §147 (2002).
104. Id.
105. Id.
106. Id.
law prohibited a certain kind of search or seizure.\textsuperscript{108} In the context of an extra-jurisdictional arrest, an officer is therefore entitled to qualified immunity if a reasonable officer would have believed that an extra-jurisdictional arrest was legal\textsuperscript{109} or if a reasonable officer would not have known that state law explicitly barred certain extra-jurisdictional arrests.\textsuperscript{110}

The federal constitution prefers warrant-based arrests to the unbridled use of general police discretion.\textsuperscript{111} The Constitution, however, does not require warrants in all circumstances.\textsuperscript{112} States are free to enact more restrictive warrant requirements than what the federal constitution requires.\textsuperscript{113} As a result, a breach of some state arrest statutes may not give rise to a per se constitutional violation. However, the social policy and legislative history behind some state extra-jurisdictional arrest statutes should be examined to determine whether a willful disregard for the statute could contemporaneously be constitutionally unreasonable.\textsuperscript{114} This analysis—which occurs in cases concerning unwarranted home entry, search incident to arrest, and administrative searches\textsuperscript{115}—should also occur when examining cases concerning flagrant violations of police officer territorial jurisdiction.\textsuperscript{116}

\textsuperscript{108} Id.

\textsuperscript{109} This is because the officer may have believed that the arrest was sanctioned by state law, exigent circumstances were present, it was a situation of high pursuit, or the officer reasonably believed he or she was effectuating a valid citizens' arrest.

\textsuperscript{110} This can occur when municipalities agree to allow their respective officers to arrest in the other's territory under certain situations and after certain steps have been followed (i.e., calling ahead for permission).


\textsuperscript{113} See, e.g., Pasiewicz v. Lake County Forest Pres. Dist., 270 F.3d 520, 522 (7th Cir. 2001).

\textsuperscript{114} See infra notes 170-355 and accompanying text.

\textsuperscript{115} See generally Welsh, 466 U.S. at 740; Payton, 445 U.S. at 573.

\textsuperscript{116} See infra notes 351-385 and accompanying text.
D. Split Reasoning Among Federal Courts of Appeals\textsuperscript{117}

1. The United States Court of Appeals for the Seventh Circuit Refuses to Determine Whether an Unlawful Extra-Jurisdictional Arrest is a Per Se Violation of the Fourth Amendment

In \textit{Pasiewicz v. Lake County Forest Preserve District},\textsuperscript{118} the United States Court of Appeals for the Seventh Circuit found that forest preserve officers did not act unreasonably under the Fourth Amendment even though they officially operated outside of their jurisdiction.\textsuperscript{119} In \textit{Pasiewicz}, two women riding horses early in the morning within a state forest preserve discovered a naked man "cavorting"\textsuperscript{120} in the woods near a school playground.\textsuperscript{121} The women reported the incident to the Lake County Forest Preserve.\textsuperscript{122} Some time later, after dropping off her daughter at a church, one of the women noticed a man sitting in a car who resembled the man she saw previously in the

\textsuperscript{117} Subsequent to this Comment, two other decisions were handed down. In \textit{Kraifer v. Kufahl}, No. CIV.A. 01-2443-KHV, 2002 WL 1932003 (D. Kan. June 24, 2002), a sheriff arrested the arrestee outside of his county's jurisdiction. \textit{Id.} at *1. The arrestee argued that, under \textit{Ross v. Neff}, the sheriff violated his due process rights under the federal constitution. \textit{Id.} The sheriff argued that the plaintiff could not sustain a § 1983 claim based upon \textit{Pasiewicz v. Lake County Forest Preserve District}. \textit{Id.} at *2. The court agreed with the sheriff, finding that the "'[s]tate rather than federal courts are appropriate institutions to enforce state rules.'" \textit{Id.} (quoting \textit{Pyles v. Raiser}, 60 F.3d 1211 (6th Cir. 1995)).

Furthermore, in \textit{United States v. Mikulski}, 317 F.3d 1228 (10th Cir. 2003), the court continued to rely on \textit{Pasiewicz}. In that case, a detective was attempting to recover stolen property from one county that traveled to another county. \textit{Id.} at 1229. Relying on a tip, the detective, along with three officers from one county, traveled to the next county and the detective arrested the defendant after a long and uncomfortable process. \textit{Id.} at 1229-30. The defendant attempted to suppress the seized evidence (the recovered stolen property) by arguing that the officers exceeded their authority by acting outside their official jurisdiction in their official capacity. \textit{Id.} at 1231. The officers further violated state statute by not notifying the law enforcement department of the other county. \textit{Id.} Although the court did not agree with the law that the government cited for support that its seizure of evidence was valid, the court did find, in a judicially active manner, for the government and against the plaintiff. \textit{Id.} at 1233. The court agreed with \textit{Pasiewicz} and disagreed with \textit{Ross}, and although the court did not condone the officer's actions, it failed to find a federal constitutional violation. \textit{Mikulski}, 317 F.3d at 1233. These two cases blindly follow the \textit{Pasiewicz} decision and its flawed reasoning and neither court attempts to weigh the constitutional reasonableness of the officers' actions.

\textsuperscript{118} 270 F.3d 520 (7th Cir. 2001).

\textsuperscript{119} \textit{Id.} at 527.

\textsuperscript{120} "Cavorting" is defined as "1) to bound, prance, or frisk about . . . ; 2) to engage in any agile frisky extravagant showy behavior." \textit{Webster's Third New International Dictionary} (3d ed. unabridged 1981). The defendant supposedly stood in the middle of the path and then ran into the woods after noticing the women. \textit{Pasiewicz}, 270 F.3d at 522.

\textsuperscript{121} \textit{Pasiewicz}, 270 F.3d at 522.

\textsuperscript{122} \textit{Id.} (each described the man differently and only agreed to the man's height, body type, baldness, age, and weight).
woods.\textsuperscript{123} The next day, she again spotted again the same man in the parking lot.\textsuperscript{124} Upon subsequent personal investigation, the woman found the suspected man's name,\textsuperscript{125} home address, and phone number.\textsuperscript{126} She turned the information over to the forest preserve rangers.\textsuperscript{127} The rangers called Pasiewicz and left him a message.\textsuperscript{128} Pasiewicz returned the call later that day, and the rangers asked him to stop by the forest preserve ranger station.\textsuperscript{129} Pasiewicz declined but invited the rangers to his work—a local high school.\textsuperscript{130} A supervising forest preserve ranger decided to arrest Pasiewicz\textsuperscript{131} and sent two rangers to the school. While in the school's athletic office, the rangers arrested Pasiewicz for public indecency, a misdemeanor in Illinois.\textsuperscript{132}

After the arrest, the high school suspended Pasiewicz from work because "his supervisor [thought that] given the charges, it was best he not work around children."\textsuperscript{133} After the incident, the district court acquitted Pasiewicz.\textsuperscript{134} Pasiewicz filed a 42 U.S.C. § 1983\textsuperscript{135} claim, arguing that the forest preserve officers acted "unreasonably" because they lacked jurisdiction to make such an arrest.\textsuperscript{136}

\begin{itemize}
  \item \textsuperscript{123} \textit{Id.}
  \item \textsuperscript{124} \textit{Id.}
  \item \textsuperscript{125} \textit{Id.} Mr. Pasiewicz had children that attended the church-sponsored school and that was the reason he was in the parking lot of the church. \textit{Id.}
  \item \textsuperscript{126} \textit{Pasiewicz,} 270 F.3d at 522. The woman obtained Mr. Pasiewicz's home address and telephone number from the church's directory. \textit{Id.}
  \item \textsuperscript{127} \textit{Id.}
  \item \textsuperscript{128} \textit{Id.}
  \item \textsuperscript{129} \textit{Id.}
  \item \textsuperscript{130} \textit{Id.} (Waukegan East High School is outside of the Lake County Forest Preserve Rangers' territorial jurisdiction).
  \item \textsuperscript{131} \textit{Pasiewicz,} 270 F.3d at 522. The supervising officer talked to the witnesses and other forest preserve officers many times. \textit{Id.}
  \item \textsuperscript{132} \textit{Id.} The officers did not specifically inquire into the incident or ask Pasiewicz about the incident. \textit{Id.} After a ten minute meeting, where the incident was not addressed, the officers informed Pasiewicz that he was under arrest. \textit{Id.} Pasiewicz called the accusation "unbelievable" and, thereafter, he was put in handcuffs and brought to the Lake County jail. \textit{Id.} He paid the one-hundred dollar bond and was released. \textit{Pasiewicz,} 270 F.3d at 522.
  \item \textsuperscript{133} \textit{Id.}
  \item \textsuperscript{134} \textit{Id.} at 526.
  \item \textsuperscript{135} 42 U.S.C. § 1983 (2000).
  \item \textsuperscript{136} \textit{Pasiewicz,} 270 F.3d at 526.
\end{itemize}
The Seventh Circuit found that the officers had probable cause to make the arrest; although they lacked territorial jurisdiction, they did not act "unreasonably." The court declared:

A violation of state law is not a per se violation of the Federal Constitution. . . . [I]t would not violate the Fourth Amendment for the Illinois Legislature to empower preserve officers to make arrests outside of the district's physical boundaries. It is difficult to see why an officer engaging in the same underlying act necessarily would.

137. Id. at 524 ("When police officers obtain information from an eyewitness or victim establishing the elements of a crime, the information is almost always sufficient to provide probable cause for an arrest in the absence of evidence that the information, or the person providing it, is not credible. . . . When probable cause has been gained from a reasonably credible victim or eyewitness, there is no constitutional duty to investigate further."). See also Sheik-Abdi v. McClellan, 37 F.3d 1240 (7th Cir. 1994).

138. Pasiewicz, 270 F.3d at 526. The Seventh Circuit Court of Appeals split Pasiewicz's claim into two parts: (1) the officers lacked the authority to make an extra-jurisdictional arrest; and (2) their lack of jurisdiction rendered their conduct unreasonable under the Fourth Amendment. Id. Because there was no state precedent offering guidance, the court did not interpret the Illinois Downstate Forest Preserve District Act, 70 ILL. COMP. STAT. 805/8(a) (2000); however, the court argued it did not need to statutorily analyze 70 ILL. COMP. STAT. 805/8(a) because the second premise was faulty. Id.

139. Id. The court cited to Kraushaar v. Flanigan, where the court previously held that a violation of a state strip search statute did not form a basis to establish either a substantive or procedural violation of the plaintiff's federal rights. Id. (citing Kraushaar v. Flanigan, 45 F.3d 1040, 1048 (7th Cir. 1995)).

In Kraushaar, the plaintiff was pulled over for appearing to be driving under the influence. Kraushaar, 45 F.3d at 1043. The officer noticed that the defendant was making "furtive" hand movements around his waist line. Id. The officer asked the defendant to get out of the car, smelled alcohol, performed a field sobriety test, and patted down the defendant. Id. The officer then asked the defendant to unbutton his pants and they fell down to his thighs, where the officer stuck his thumb into the defendant's waistband. Id. Thereafter, the officer took the defendant to jail and charged him with a DUI. Id. The Seventh Circuit affirmed the district court's holding "that the search did not comply with all of the requirements set forth by the state statute governing strip searches. . . . [H]owever . . . the state statute did not create a federally protected liberty interest, and therefore, failure to comply with the statute's requirements was not actionable under 42 U.S.C. § 1983." Id. at 1045. The Seventh Circuit expanded into a Fourteenth Amendment procedural and substantive due process analysis. Kraushaar, 45 F.3d at 1047. The court stated that "[t]he defendant's] Fourth Amendment rights against unreasonable searches and seizures are protected under the Fourteenth Amendment's Due Process Clause." Id. at 1047. However, under substantive due process, "the violation of state law is not itself the violate of the Constitution . . . [a] state ought to follow its law, but to treat a violation of state law as a violation of the Constitution is to make the federal government the enforcer of state law. State rather than federal courts are the appropriate institutions to enforce state rules." Id. at 1048. Under procedural due process, "courts will find a liberty interest only if the state's statute or regulation used 'language of an unmistakably mandatory character, requiring that certain procedures 'shall,' 'will,' or 'must' be employed' . . . and contains substantive standards or criteria for decisionmaking as opposed to vague standards that leave the decision maker with unfettered discretion." Id. at 1048. The court continued and stated, "under a procedural due process analysis, the deprivation of the liberty interest is not itself unconstitutional; what is unconstitutional is the deprivation without proper process." Id. at 1049.

The court in Pasiewicz also cited to Archie v. City of Racine, where it held that a city ambulance dispatcher's failure to send medical attention to a hyperventilating women who later died
The court, however, concluded its opinion indicating certain policies to consider:

[A]n officer can act incorrectly with regard to his jurisdiction just as he can act incorrectly with regard to any other factor involved in the exercise of his authority . . . but the facts of this case show that the officers did not act unreasonably under the Fourth Amendment, even assuming they acted outside of their territorial jurisdiction.  

2. *The United States Court of Appeals for the Tenth Circuit Concludes that an Unlawful Extra-Jurisdictional Arrest is a Per Se Violation of the Fourth Amendment*

In *Ross v. Neff*, the United States Court of Appeals for the Tenth Circuit held that county police officials did not have criminal jurisdiction over a park located on Native American land. More importantly, the court held “a warrantless arrest executed outside of an arresting officer’s jurisdiction is analogous to a warrantless arrest without probable cause.”

In *Ross*, the defendant, a Native American man, allegedly drove his car near a ball park and playground located on American Indian land...

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was not grounds for a constitutional tort. *Pasiewicz*, 270 F.3d at 526 (citing Archie v. City of Racine, 847 F.2d 1211, 1217 (7th Cir. 1988)). In reaching this holding, the court in *Archie* stated: A state ought to follow its law, but to treat a violation of state law as a violation of the Constitution is to make the federal government the enforcer of state law. State rather than federal courts are the appropriate institutions to enforce state rules. Indeed, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. *Archie*, 847 F.2d at 1217.

The fact remains, however, that the Illinois Legislature may not have wanted, and therefore did not authorize, district police officers to make extra-jurisdictional arrests. These social and policy considerations are considered below. The court did note a split between the Eighth and Tenth Circuits on whether an unauthorized extra-jurisdictional arrest would be a per se violation of the Fourth Amendment. *Pasiewicz*, 270 F.3d at 526 n.3.

140. *Pasiewicz*, 270 F.3d at 527. The court seemed to be departing from its hard-nosed stance in *Archie* and *Kraushaar*. The case might have come out differently if the officers knew they lacked jurisdiction and the Waukegan Police Department specifically prohibited the two officers from arresting Pasiewicz. This blatant disregard of state law and the chain of command could weigh on the scales of reasonableness. In this situation, however, the police officers asked the Waukegan Police Department for permission to make the arrest extra-jurisdictionally, even though it may not have been authorized by Illinois state law. *Id.*

141. 905 F.2d 1349 (10th Cir. 1990)

142. *Id.* at 1353. The court examined applicable federal statutory authority including: 18 U.S.C. §§ 1152 (congressional granting of general jurisdiction to some states over Indian country within their borders); 1321 (a statutory method by which a state, with the consent of the tribe, can assume jurisdiction over Indian country); and 1322 (allowing federal enforcement, on federal enclaves, of state and local laws).

143. *Ross*, 905 F.2d at 1354 (The court expressly held that an arrest made outside of the arresting officer’s jurisdiction violates the Fourth Amendment and is actionable under 42 U.S.C. § 1983 (1990)).
while under the influence of alcohol.\textsuperscript{144} Another tribe member called the county sheriff’s department to “make an appearance” at the ballpark.\textsuperscript{145} A county officer reported to the ballpark, arrested the defendant, and during the arrest, shot the defendant.\textsuperscript{146} The defendant sued under 42 U.S.C. § 1983, arguing that the officer lacked jurisdiction to make an arrest and, therefore, violated his Fourth Amendment rights.\textsuperscript{147}

The Tenth Circuit agreed, holding that the arrest—occurring outside of the officer’s jurisdiction—violated the defendant’s Fourth Amendment rights.\textsuperscript{148} The court stated: “Absent exigent circumstances, such an arrest is presumptively unreasonable.”\textsuperscript{149}

3. The United States Court of Appeals for the Eighth Circuit Concludes that an Unlawful Extra-Jurisdictional Arrest is not a Per Se Violation of the Fourth Amendment

In Abbott v. City of Crocker,\textsuperscript{150} a majority of the United States Court of Appeals for the Eighth Circuit reversed a district court’s determination that “[an] arrest in violation of state law necessarily also constituted a violation of the Fourth Amendment.”\textsuperscript{151} In Abbott, an officer observed the defendant driving a red pickup truck through a convenience store parking lot.\textsuperscript{152} Earlier that same day, the officer saw the same truck being driven in a fast, wild, and reckless manner.\textsuperscript{153} The officer pulled up near the truck and noticed the defendant acting as though intoxicated.\textsuperscript{154} The defendant refused to pull over in the parking lot, started to leave, and the officer followed.\textsuperscript{155} The de-

\textsuperscript{144} Id. at 1351.
\textsuperscript{145} Id. at 1352.
\textsuperscript{146} Id. The charge was public intoxication. Id. Before the arrest, the officer and the defendant scuffled and the officer shot the defendant in the leg, which was later amputated. Id.
\textsuperscript{147} Ross, 905 F.2d at 1351.
\textsuperscript{148} Id. at 1354 (concluding that “A warrantless arrest executed outside of the arresting officer’s jurisdiction is analogous to a warrantless arrest without probable cause”) (citing Hinshaw v. Doffer, 785 F.2d 1260, 1266 (5th Cir. 1986); Karr v. Smith, 774 F.2d 1029, 1031 (10th Cir. 1985)).
\textsuperscript{149} Id. The state law at the time of the arrest was not clear on whether state officers had jurisdiction on the Indian land. Id. However, the court stated that even if the officer thought he could have been there to effectuate an arrest, that would have only lent itself to a qualified immunity defense of the officer’s action and not to the underlying unreasonableness of the officer’s unlawful extra-jurisdictional arrest. Id. at 1354-55.
\textsuperscript{150} 30 F.3d 994 (8th Cir. 1994).
\textsuperscript{151} Id. at 998.
\textsuperscript{152} Id. at 996.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
fendant left Crocker’s city limits\textsuperscript{156} and the pursuing Crocker police officer allegedly requested county police for assistance.\textsuperscript{157} The Crocker city officer followed the truck to a house outside of the Crocker city limits and, after an altercation, the officer arrested the defendant.\textsuperscript{158}

a. \textit{Abbott}’s Majority Decision

The district court held that the officer violated the defendant’s constitutional rights by pursuing him beyond the city limits for the purpose of arresting him.\textsuperscript{159} The Eighth Circuit majority reversed, finding that a violation of state arrest authority is not a per se violation of the Fourth Amendment.\textsuperscript{160} The majority cited the United States Supreme Court’s decision in \textit{Cooper v. California}:\textsuperscript{161}

\>[T]he question here is not whether the search was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment. Just as a search authorized by state law may be an unreasonable one under that amendment, so may a search not expressly authorized by state law be justified as a constitutionally reasonable one.\textsuperscript{162}

Moreover, the majority proclaimed that some governmental conduct that violates certain administrative state statutes is not also necessarily constitutionally unreasonable.\textsuperscript{163} The \textit{Abbott} majority held that a police violation of a state law does not establish a Fourth Amendment violation; however, it hinted toward some public policy considerations when stating: “[C]ompliance with state law may well be relevant in determin[ing] whether police conduct was reasonable for the Fourth Amendment purposes.”\textsuperscript{164}

\textsuperscript{156.} \textit{Abbott}, 30 F.3d at 996 (Crocker is a small city (a fourth-tier city) with only one police officer on duty at any one time.).

\textsuperscript{157.} \textit{Id.} The mayor of Crocker testified that Crocker police policy and practice mandated that a police officer could pursue outside of Crocker city jurisdiction as long as the police officer radioed the county. \textit{Id.} A dispute remained whether the Crocker officer radioed the county at all. \textit{Id.}

\textsuperscript{158.} \textit{Id.}

\textsuperscript{159.} \textit{Id.}

\textsuperscript{160.} \textit{Abbott}, 30 F.3d at 998. The state conceded, however, that the officer violated Missouri law because an officer of a fourth-class city has no authority to effectuate an arrest outside the city limits for a municipal ordinance violation or traffic offense. \textit{Id.} at 997.

\textsuperscript{161.} 386 U.S. 58 (1967).

\textsuperscript{162.} \textit{Id.} at 61.

\textsuperscript{163.} \textit{Abbott}, 30 F.3d at 998 (citing Cole v. Bone, 993 F.2d 1328, 1334 (8th Cir. 1993)).

\textsuperscript{164.} \textit{Id.} The court argued that a violation of state law is not a per se violation of the Fourth Amendment, but should be considered when determining reasonableness. \textit{Id.} However, the court does not determine how unreasonable the officer’s action was when examining state law. \textit{Id.} The court also cited discrepancies in its rulings on whether a violation of a state law could be a violation of the Fourth Amendment. \textit{Id. Compare} Bissonette v. Haig, 800 F.2d 812, 816 (8th
b. Abbott’s Dissenting Opinion

Dissenting Judge Richard S. Arnold argued that a violation of some state laws can, and should be, a violation of the Fourth Amendment.\(^{165}\) He contended that courts should determine whether the police conduct in question was “reasonable” under the Fourth Amendment:\(^{166}\)

The key issue in determining whether a violation of state law constitutes a violation of the Fourth Amendment, in the context of an arrest, is whether the statute in question is designed to protect individuals from police behavior that would otherwise be unreasonable.\(^{167}\)

Once a court determines that an officer lacked territorial jurisdiction to make the arrest, the court should analyze a second factor: the nature of the statute that the officer violated.\(^{168}\) Consequently, before holding an extra-jurisdictional arrest reasonable, the court should consider the policies and interests underlying the statutory prohibition of such arrests.\(^{169}\)

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\(^{165}\) Abbott, 30 F.3d at 999 (agreeing with the majority that a violation of state law does not automatically add up to a cause of action under 42 U.S.C. § 1983 (1990)).

\(^{166}\) Id. The majority noted that a violation of state law may be considered in determining reasonableness under the Fourth Amendment; however, did not determine the statutory violation here. Id. The dissent argued that reasonableness requires looking into the officer’s conduct and the purpose behind the statute which he violated. Id.

\(^{167}\) Id. at 1000 (citing United States v. Baker, 16 F.3d 854, 856 n.1 (8th Cir. 1994); Cole v. Bone, 993 F.2d 1328, 1334 (8th Cir. 1993); Bissonette, 800 F.2d at 816 (“[T]he use of military personnel to enforce domestic law, which was contrary to a federal statute, violated the Fourth Amendment. In so holding, we looked to the federal statute in question and determined that the policy of the statute involved was so important that the seizure violated the Fourth Amendment.”)).

\(^{168}\) Id.

\(^{169}\) Abbott, 30 F.3d. at 1000. Public policy considerations including smaller communities are unlikely to have the resources to provide officers with proper training in the elements of probable cause or arrest procedures. By limiting an officer’s jurisdiction to the community in which she serves, a state helps to ensure not only that the power of the police over individuals will be appropriately restricted, but also that an officer will be sufficiently trained for the types of arrests likely to occur in her community.

Id.
III. Analysis

Federal law controls when deciding whether a constitutional violation occurred. Additionally, a direct violation of some state arrest statutes could contemporaneously embrace constitutionally unreasonable conduct when analyzed under the Fourth Amendment by weighing the individual's interest in privacy and freedom from unreasonable seizures against society's interest in protecting itself from criminal conduct. This section will discuss leading academic thought concerning Fourth Amendment "reasonableness." This section will then analyze current majority and minority federal judiciary positions on the constitutional "reasonableness" of state statutory violations. Finally, this section will show that, in certain circumstances, state law is examined when determining the constitutional reasonableness of some police conduct. State law should be appraised to determine the constitutional "reasonableness" of flagrant, unlawful extra-jurisdictional arrests.

A. The Fourth Amendment to the Federal Constitution

Along with requiring probable cause to effectuate warrantless arrests, the Fourth Amendment prohibits all "unreasonable" searches and seizures. The Supreme Court has suggested that an arrest is more serious and radical than a search. The reason: One's person is most sacred and should be guarded to the utmost against "unreasonable" police conduct. Fourth Amendment "reasonableness" is defined objectively as whether "a man of reasonable caution is in the

171. See Pasiewicz v. Lake County Forest Pres. Dist., 270 F.3d 520, 527 (7th Cir. 2001); Abbott, 30 F. 3d at 998.
172. See infra notes 194-220 and accompanying text.
173. See infra notes 221-247 and accompanying text.
174. See infra notes 248-258 and accompanying text.
175. See infra notes 259-286 and accompanying text.
176. The Fourth Amendment states:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
U.S. Const. amend. IV. See also Abbott, 30 F.3d at 997.
178. See generally Fisher, supra note 41, at 14. There is a pure and natural right that "consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation, and this right is safeguarded by various constitutional provisions, especially those relating to prosecution for crime." Id.
belief that the action taken was appropriate," in light of the particular circumstances of each case, and based on the facts available to the officer at the moment of the search or seizure.

The right to personal liberty is recognized as a natural right, and the Constitution merely reaffirms central and natural rights, perpetuating them for eternity within the United States. However, the natural rights enumerated in the federal constitution and the Bill of Rights are not absolute—they must be weighed to promote the common good of society. The rights to personal liberty and privacy are constantly balanced against society’s right to protect itself from

179. Terry v. Ohio, 392 U.S. 1, 22 (1968) (internal citations omitted) ("[S]imple ‘good faith on the part of the arresting officer is not enough’ . . . . If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be ‘secure in their persons, houses, papers and effects,’ only in the discretion of the police.") (quoting Beck v. Ohio, 379 U.S. 89, 97 (1964)).

180. Id.

181. See generally McNamara, supra note 1. However, there is constant debate as to whether the right to privacy is a natural right or merely a judicially created right. See generally Jed Rubenfeld, The Right of Privacy, 102 Harv. L. Rev. 737 (1989); Russell Kirk, Natural Law and the Constitution of the United States, 69 Notre Dame L. Rev. 1035 (1994).


The rights of the individual are not derived from governmental agencies, either municipal, state or federal, or even from the Constitution. They exist inherently in every man, by endowment of the Creator, and are merely reaffirmed in the Constitution, and restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government. The people’s right are not derived from the government, but the government’s authority comes from the people. The Constitution but states against these rights already existing, and when legislative encroachment by the nation, state, or municipality invade these original and permanent rights, it is the duty of the courts to so declare, and to afford the necessary relief. The fewer restriction that surround the individual liberties of the citizen, except those for the preservation of the public health, safety, and morals, the more contented the people and the more successful the democracy.

Id. Another scholar noted:

‘Those great and good men foresaw that troublesome times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world has taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.’

Osmond K. Fraenkel, Concerning Searches and Seizures, 34 Harv. L. Rev. 361, 385 (1921) (quoting Ex Parte Milligan, 71 U.S. (4 Wall.) 2 (1866)).

183. See also Fisher, supra note 41, at 16 (“No citizen has the unrestrained right to do as he pleases regardless of the rights of others,” because to allow so would lead to anarchy.).

184. Id. “Constitutional freedom means liberty regulated by law.” Id. Such rights and privileges are subject to reasonable control by the state for the general welfare of all citizens. Id.
criminal behavior.\textsuperscript{185} This balance is a Fourth Amendment require-
ment.\textsuperscript{186} Arrest laws should promote public protection and safety,\textsuperscript{187} while individual members of society should remain free from arbitrary
and unreasonable police conduct.\textsuperscript{188}

The people's voice, codified within statute and ordinance should, in
certain circumstances, be examined to determine the constitutionality
of unlawful warrantless arrests. Although the Fourth Amendment fo-
cuses on probable cause, it also maintains that searches and seizures
must be reasonable.\textsuperscript{189} Arrest statutes curb natural rights—personal
rights—that emanate from something higher than the Constitution it-
self.\textsuperscript{190} Although states are free to establish laws that are more string-
gent than the parameters of the federal constitution, some state
statutes merely reiterate constitutional values, common law doctrines,
or strong social policies.\textsuperscript{191} Because the federal constitution reiterates
sacred and natural rights, a blanket prohibition against the Fourth
Amendment applying to any state arrest statutory violation, without
first examining the statute's legislative history and social policies, un-
questionably dissolves the citizenry's Fourth Amendment right to be
free from all unreasonable governmental conduct. In certain circum-
stances, state statutes are examined when determining the constitu-
tional reasonableness of state actions under the Fourth
Amendment\textsuperscript{192} and, accordingly, some state arrest statutes should be examined when
determining whether an unlawful arrest was constitutionally reasona-
able. Modern Fourth Amendment jurisprudence and legal justice can-
not be reconciled in one bright-line rule of inapplicability.\textsuperscript{193}

\begin{itemize}
  \item \textsuperscript{185} Id. at 15-16. Although the right to privacy has been in constant judicial struggle as to
whether it is a natural right, it is the right of security of the person and is commonly defined as
the right to be let alone.
  \item \textsuperscript{186} Terry v. Ohio, 392 U.S. 1, 22 (1968).
  \item \textsuperscript{187} See also Fisher, supra note 41, at 16.
  \item \textsuperscript{188} Id.
  \item \textsuperscript{189} U.S. Const. amend. IV.
  \item \textsuperscript{190} Fisher, supra note 41, at 17 ("The liberty guaranteed to us by the Constitution implies
the absence of arbitrary restraint, not immunity from reasonable regulations and prohibition
imposed in the interests of the community.").
  \item \textsuperscript{191} Elkins v. United States, 364 U.S. 206, 224 (1960).
  \item \textsuperscript{192} LaFave, Search & Seizure: A Treatise on the Fourth Amendment 234
(1996) (including inventory searches and housing and commercial administrative searches).
  \item \textsuperscript{193} People v. McKay, 41 P.3d 59, 83-84 (Cal. 2002) (Brown, J., dissenting). Justice Brown
stated:
  
In recent years, Fourth Amendment analysis has attained a kind of perverse, irrational
fixity; probable cause equals reasonableness. Only by insisting probable cause and rea-
sonableness are synonymous can courts avoid the socially costly consequences of the
exclusionary rule. For this false peace, we pay too high a price. We are asked to surren-
der our right to be protected from unreasonable intrusions. Ironically, the severe san-
tion of the exclusionary rule has not discouraged unreasonable searches; it has, instead,
B. Modern Leading Scholars on Fourth Amendment Reasonableness

Professor Akhil Reed Amar\(^\text{194}\) believes that "[t]he core of the Fourth Amendment . . . is neither warrant nor probable cause, but reasonableness."\(^\text{195}\) He argues that "reasonableness" is not defined by probability: "Common sense tells us to look beyond probability to the importance of finding what the government is looking for, the intrusiveness of the search, the identity of the search target, [and] the availability of other means of achieving the purpose [pursued] . . . ."\(^\text{196}\) Society's common sense is one definition of Fourth Amendment reasonableness\(^\text{197}\) and common sense should be coupled with the constitutional definition of reasonableness.\(^\text{198}\) Amar concludes, "[B]y focusing on constitutional reasonableness, [society] restores the Fourth [Amendment] to its rightful place."\(^\text{199}\)

Professor Thomas Davies\(^\text{200}\) believes that the "[m]odern [n]otion of 'Fourth Amendment [r]easonableness'" is based on an "overarching reasonableness-in-the-circumstances standard."\(^\text{201}\) Davies does not

shrunk the constitutional protection against them . . . . Looking beyond probable cause and viewing reasonableness as a mandate of independent vitality restores some measure of constitutional balance. Probable cause and reasonable conduct are not the same thing. Requiring the police to behave reasonably—i.e., to assess their conduct in light of all the surrounding circumstances—is not asking too much. It is the same burden we impose on every adult. The Constitution demands no less of the government.

\textit{Id.} at 84.

\(^{194}\) Professor Amar is a Southmayd Professor at Yale Law School.

\(^{195}\) Akhil R. Amar, \textit{Fourth Amendment First Principles}, 107 \textit{Harv. L. Rev.} 757, 801 (1994). Professor Amar states that "because of the Court's 'preoccupation' with warrants and probable cause—ordaining these with one hand while chiseling out exception after exception with the other—the Justices have spent surprisingly little time self-consciously reflecting on what, exactly, makes for a substantively unreasonable search or seizure." \textit{Id.}

\(^{196}\) \textit{Id.}

\(^{197}\) \textit{Id.} at 802-03. This common sense approach should be based within society's view of reasonableness from tort law.

\(^{198}\) \textit{Id.} at 804. The Fourth Amendment is not just based on tort law and common sense; it is also based within the constitutional definition of the word. \textit{Id.} Amar suggests examining the Bill of Rights "to identify constitutional values that are elements of constitutional reasonableness." Amar, supra note 195, at 805. Many times, Amar believes that society's common sense approach to reasonableness will coincide with reasonableness as examined from the Bill of Rights. \textit{Id.} The First Amendment, Fifth Amendment, and Equal Protection and Due Process Clauses under the Fourteenth Amendment should be examined when determining constitutional reasonableness under the Fourth Amendment. \textit{Id.} at 805-11.

\(^{199}\) \textit{Id.} at 811.

\(^{200}\) Professor Davies is an Associate Professor at the University of Tennessee College of Law.

\(^{201}\) Thomas Y. Davies, \textit{recovering the Original Fourth Amendment}, 98 \textit{Mich. L. Rev.} 547, 557-58 (1999). Modern readers of the Fourth Amendment assume that the framers intended for the amendment to regulate all governmental searches and seizures. \textit{Id.} If this is true, then reasonableness is the only standard by which one can gauge governmental conduct. \textit{Id.}

believe that the debate is whether reasonableness is the central concept in Fourth Amendment search or seizure analysis; rather, Davies deems that the central notion is how the Fourth Amendment's reasonableness standard should be construed.\textsuperscript{202} Davies argues that no broad reasonableness standard existed during the framers' era\textsuperscript{203} and further contends that "reasonableness," as used in early Fourth Amendment jurisprudence, was not intended to create a broad reasonableness standard for assessing warrantless searches and seizures or to lead officers in their use of discretion when effectuating warrantless searches and seizures.\textsuperscript{204} Instead, Davies believes that Fourth Amendment "reasonableness" operated to "reaffirm the common law's general resistance to conferring discretionary authority on ordinary officers."\textsuperscript{205} Nevertheless, societal change transformed and modernized governing legal principles.\textsuperscript{206} The framers never predicted the position society is in today and, for that reason, there is "little choice but to treat constitutional texts as expressions of broad principles, rather than as specific solutions to specific historical threats."\textsuperscript{207} The issue is "the degree to which it is possible and/or desirable to constrain discretionary police authority by a regime of rules . . . ."\textsuperscript{208} Davies rightfully concludes that "reasonableness" can never return to its original meaning; however, "the right to be secure" was the framers' main concern—and is where modern Fourth Amendment jurisprudence should focus.\textsuperscript{209}

\textsuperscript{202} Id. at 559. Davies believes the Warren Court and advocates of civil liberties approach Fourth Amendment reasonableness through a "warrant-preference" construction in which the "use of a valid warrant—or at least compliance with the warrant standard of probable cause—is the salient factor in assessing the reasonableness of a search or seizure." Id. This construction favors the use of the exclusionary rule and allows for more judicial supervision of police conduct. Id. The Burger Court through the Rehnquist Court have preferred a "generalized-reasonableness" construction where "the value of the warrant is discounted and the constitutionality of a search or seizure is determined simply by making a relativistic assessment of the appropriateness of police conduct in light of the totality of the circumstances." Davies, supra note 201, at 559. This approach allows for greater law enforcement discretion in fighting crime and disfavors the use of the exclusionary rule. Id. at 559-60.

\textsuperscript{203} Id. at 591.

\textsuperscript{204} Id. at 724.

\textsuperscript{205} Id. The framers believed that the states would adopt workable rules concerning valid warrant search and seizure authority and "wrote what they meant and they meant what they wrote; they simply did not perceive the problem of search and seizure the same way that we do [today]." Id. at 724.

\textsuperscript{206} See Davies, supra note 201, at 724-41.

\textsuperscript{207} Id. at 559.

\textsuperscript{208} Id. at 747. The change of society promoted a change in police discretionary behavior. The main issue today should be "not whether we will allow any discretionary police authority, but how much discretionary authority will be conferred and in what circumstances." Id. at 747-48.

\textsuperscript{209} Id. at 750.
Finally, Professor George C. Thomas III\textsuperscript{210} believes that the principal concern of the Bill of Rights was the protection of American citizens from an overreaching and powerful central government.\textsuperscript{211} Thomas argues that when the Supreme Court applied the criminal procedure protections\textsuperscript{212} encompassed in the Fourth Amendment to the states through the Fourteenth Amendment, the concern “was no longer the fear of a powerful central government but, rather, a concern with the accuracy of fairness of the state processes leading to a verdict.”\textsuperscript{213} By applying the Bill of Rights to the states,\textsuperscript{214} the Supreme Court amended and diluted society’s constitutional protections.\textsuperscript{215} Furthermore, criminals wrote the Fourth Amendment for the protection of criminals,\textsuperscript{216} but the fear of a powerful government did

\textsuperscript{210} Professor Thomas is a Professor of Law and Judge Alexander P. Waugh, Sr. Distinguished Scholar.


\textsuperscript{212} Professor Thomas is referring to the Fourth, Fifth, and Sixth Amendments to the United States Constitution.

\textsuperscript{213} Thomas, \textit{supra} note 211, at 150 (noting that the Court has little interest in making the states have a difficult time obtaining criminal convictions as long as the process will produce accurate verdicts and meet minimal fairness levels).

\textsuperscript{214} \textit{Id.} at 151. This application creates a watered-down version of the Bill of Rights because states have exclusive jurisdiction over a majority of crimes today and they need to have workable rules of criminal procedure and a wide latitude for investigation and prosecution of these everyday crimes. \textit{Id.}

\textsuperscript{215} \textit{Id.}

\textsuperscript{216} \textit{Id.} at 156. Scholars have suggested:

\textit{[T]he Framers... surely intended the Bill of Rights to permit guilty defendants go free. After all, many of the Framers themselves had violated British law. Thus, 'many of these [Bill of Rights] rules were written into the Constitution by real criminals fresh from experience as smugglers, tax evaders, seditionists, and traitors' to the [British] regime.... [M]any of the Framers would have wanted the Bill of Rights to frustrate the prosecution or conviction of anyone charged with 'publishing any false, scandalous, and malicious writing... against the government of the United States.'}


The principle concern in the Bill of Rights was not to protect innocent defendants. The Framers instead intended to create formidable obstacles to federal investigation and prosecution of crime. An expansive protection against prosecution means... that guilty as well as innocent people go free, but the Framers expressed no concern about this effect of the Bill of Rights.

Thomas, \textit{supra} note 211, at 160. Additionally,

The crimes Americans fear most—everyday property crimes and crimes of violence—have always been the responsibility of local police and prosecutors. The modern Court’s instinct has been to seek ways to make it easier for police and prosecutors to solve these kinds of crimes and convict the perpetrators. But the Framers were not concerned with the government’s interest in solving crime. While we today fear criminals, the Framers feared the central government.

\textit{Id.} at 173. Thomas has also stated:
not extend to state governments.\textsuperscript{217} The framers of the Fourteenth Amendment did not trust "state legislatures and judges as completely as the framers of the Bill of Rights."\textsuperscript{218} Consequently, Thomas argues that the Fourteenth Amendment should be interpreted separately from the Bill of Rights' criminal procedure guarantees,\textsuperscript{219} and state criminal protectors and enforcers of laws "should be permitted to engage in methods that are fair but not countenanced by the Bill of Rights."\textsuperscript{220}

These differing opinions of Fourth Amendment "reasonableness" exemplify an ongoing debate—what the framers considered constitutionally reasonable or unreasonable has changed as society has evolved. The meaning of "reasonableness" in today's society is not certain; however, the framers of the Constitution and the Bill of Rights wrote in broad language allowing new interpretations to remedy new societal needs, goals, and challenges. These concepts present the basis for analyzing whether an unlawful extra-jurisdictional state arrest can ever be contemporaneously unreasonable under the federal constitutional.

\textbf{C. Whether a Violation of State Arrest Law Can Concurrently Violate the Fourth Amendment: Two Federal Judiciary Interpretations}

In the federal courts, schools of thought disagree about whether police compliance with state arrest law should be a factor in determining the "reasonableness" of certain police conduct.\textsuperscript{221} In determining which school to follow, federal courts are ultimately guided by two factors: the circumstances surrounding a particular case, and the attitudes of the sitting judge concerning Fourth Amendment "reasonableness." Although a majority of federal judges believes that a police

\textsuperscript{217} Thomas, \textit{supra} note 211, at 161.
\textsuperscript{218} \textit{Id.} at 203 (The point of the Fourteenth Amendment was to restrict the power of the states to take away citizens' rights.).
\textsuperscript{219} \textit{Id.} at 217 (This could be done by focusing on dicta in past decided cases that would not require the Supreme Court to discontinue protecting stare decisis.).
\textsuperscript{220} Thomas, \textit{supra} note 211, at 232.
\textsuperscript{221} See \textit{infra} notes 225-350 and accompanying text.
official's violation of some state arrest statute, including state extra-territorial arrest statutes, does not concurrently give rise to a contemporaneous Fourth Amendment claim when probable cause exists, a minority of federal judges believes police compliance with state arrest law is integral in determining the Fourth Amendment "reasonableness" of certain unlawful arrests.\footnote{222} The United States Supreme Court has never fully or precisely analyzed a case in which a state officer effectuated an intrastate arrest outside of his or her jurisdiction in direct and flagrant violation of a state law; however, the Court has conflictingly commented on whether a violation of some state laws could, contemporaneously, violate an individual's Fourth Amendment rights.\footnote{223} Nevertheless, no bright-line rule of reasonableness exists under the Fourth Amendment, and whether a search or seizure is unreasonable depends upon the facts and circumstances of each case.\footnote{224}

1. In Certain Search and Seizure Circumstances, Federal Courts Refuse to Consider State Statutory Compliance When Determining Fourth Amendment Reasonableness

The Supreme Court has "never taken the position that an arrest made on probable cause violates the Fourth Amendment merely because a taking of custody was deemed unnecessary (as a matter of state law . . . .)"\footnote{225} In \textit{Snowden v. Hughes},\footnote{226} the Court held: "[A] mere violation of state statute does not infringe the Federal Constitution."\footnote{227} Moreover, in \textit{Pennhurst State School & Hospital v. Halder-}

\footnote{222. \textit{Id.}}
\footnote{223. \textit{See generally} Cooper v. California, 386 U.S. 58, 59-61 (1967); Ker v. California, 374 U.S. 23, 33-36 (1963).}
\footnote{225. 1 LAFAVE, \textit{supra} note 192, at 141. \textit{See also} People v. McKay, 41 P.3d 59, 66 n.4 (Cal. 2002).}
\footnote{226. 321 U.S. 1 (1944).}
\footnote{227. \textit{Id.} at 11. However, \textit{Snowden} was not a criminal case under the Fourth Amendment. \textit{Snowden} involved a claim for equal protection under the Fourteenth Amendment. \textit{Id.} at 2. The plaintiff complained he was denied equal protection when the State of Illinois denied him access to the primary election for representatives of the General Assembly. \textit{Id.} at 3. The plaintiff claimed that members of the State Primary Canvassing Board of Illinois, through state action, refused to nominate the petitioner for the republican candidate for the state position, even though the plaintiff received the highest number of votes, and that state action denied the plaintiff equal protection of the laws in violation of the Fourteenth Amendment. \textit{Id.} at 3-4. The United States Supreme Court stated that "[t]he protection extended to citizens of the United States by the privileges and immunities clause includes those rights and privileges which, under}
man," the Court, over strong dissent from Justices William J. Brennan and John Paul Stevens, declared: "[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism . . . ." In *Elkins v. United States*, the Court examined whether evidence obtained from an unreasonable search and seizure by state police officers, with no federal involvement, may be introduced into evidence in federal court. The Court answered in the negative, asserting that evidence obtained by state officers during a search, which would have been illegal if conducted by federal officers, violates a defendant's Fourth Amendment right to be free from unreasonable searches and seizures. In *Cooper v. California*, the Court held that a search of a vehicle, a week after legal impoundment that conformed to state narcotics law, was not unreasonable under the Fourth

the laws and Constitution of the United States, are incident to citizenship of the United States, not . . . [those] rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established state law." Id. at 6. There was no contention that the state statute governing the voting and nominating processes for state government was inconsistent with the Fourteenth Amendment guarantees. *Snowden*, 321 U.S. at 7. There was no showing that the nomination board "intentional[ly] or purposeful[ly]" discriminated between persons or classes." Id. at 7. Purposeful or intentional discrimination is what the Fourteenth Amendment prohibits, not the board's action of deviating from state law governing the nomination procedure and "[a] construction of the equal protection clause which would find a violation of federal right in every departure by state officers from state law is not to be favored." Id. at 11-12. It must be remembered, however, that this case concerned the honor of nomination for public office, not a denial of Fourth Amendment rights in a criminal prosecution.

229. Id. at 106. It concluded that the doctrines from *Ex parte Young*, 209 U.S. 123 (1908) (a suit challenging the federal constitutionality of a state official's action is not one against the state within the Eleventh Amendment) and *Edelman v. Jordan*, 415 U.S. 651 (1974) (refusing to extend Young and recognizing the need to promote the supremacy of federal law that is the basis in Young must be accommodated to the constitutional immunity of the states) are inapplicable to a claim against state officials for a violation of state law. Id. at 106. The Court again focused on the lack of "willful or even negligent" conduct by the state officials. Id. at 107. However, *Pennhurst* was an Eleventh Amendment class action claim brought by mentally retarded citizens for a violation of their statutory rights based on the condition of the mental hospital in which they stayed. *Pennhurst*, 465 U.S. at 103-04.
231. Id. at 208. This is also called the "silver platter doctrine." Id.
232. The Court in *Elkins*, concerning an illegal search, announced, "In determining whether there has been an unreasonable search and seizure by state officers, a federal court must make an independent inquiry, whether or not there has been such an inquiry by a state court, and irrespective of how any such inquiry may have turned out. The test is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed." Id. at 223-24.
Amendment. In deciding the issue, the Court noted, “[T]he question . . . [was] not whether the search was authorized by state law . . . rather whether the search was reasonable under the Fourth Amendment.” Finally, in California v. Greenwood, the Court declared it has

[n]ever intimated . . . that whether or not a search is reasonable within the meaning of the Fourth Amendment depends on the law of the particular State in which the search occurs. [The Court has] emphasized instead that the Fourth Amendment analysis must turn on such factors as “our societal understanding that certain areas deserve the most scrupulous protection from government invasion.”

Following this line of Supreme Court decisions, some federal circuits hold that police compliance with state arrest laws serves no purpose in Fourth Amendment claims of unreasonable police conduct.
For example, in *United States v. Le*, 239 the United States Court of Appeals for the Tenth Circuit held: "The fact that [an] arrest, search, or seizure may have violated state law is irrelevant as long as the standards developed under the Federal Constitution were not offended." 240 However, the court continued, stating that compliance with state warrant procedure is only part of the totality of the circumstances that a federal court should consider when determining warrant sufficiency. 241 Moreover, in *United States v. Wright*, 242 the United States Court of Appeals for the Sixth Circuit added to the *Le* holding, stating, "[T]his [holding] promotes uniformity in federal prosecutions. Indeed, it would be strange for the results of federal prosecutions to depend on the fortuity of the defendants being arrested in one state or another." 244

When analyzing extra-jurisdictional arrest, these same federal courts rely on "federalism" to dispose of constitution violation claims. More importantly, in many cases, the issue is disposed of in one sentence: "The federal government is not the enforcer of state law." 245 This reasoning is a source of concern because Fourth Amendment probable cause is now synonymous with reasonableness. 246

2. In Other Circumstances, Federal and State Courts Examine Police Compliance with State Statutes When Determining Fourth Amendment Reasonableness

A federal court that declares that state statutory compliance serves no place in determining the constitutional "reasonableness" of some

the Federal Constitution... When a federal court must decide whether to exclude evidence obtained through an arrest, search, or seizure by state officers, the appropriate inquiry is whether the arrest, search, or seizure violated the Federal Constitution, not whether the arrest, search, or seizure violated state law.

239. 173 F.3d 1258 (10th Cir. 1999).
240. *Id.* at 1265. However, *Le* involved violations of state law sufficiency of a warrant requiring more specificity than what the Fourth Amendment required. *Id.* Oklahoma law required an affidavit for an arrest warrant to include the specific dates illegal activity was observed taking place on the premises where the warrant was to be served. *Id.* at 1265.
241. 16 F.3d 1429 (6th Cir. 1994).
242. *Id.* at 1265.
243. *Id.* at 1265.
244. *Id.*
245. Pasiewicz v. Lake County Forest Pres. Dist., 270 F.3d 520, 526 (7th Cir. 2001). See also Kraushaar v. Flanigan, 45 F.3d 1040, 1048 (7th Cir. 1995); Abbott v. City of Crocker, 30 F.3d 994, 998 (8th Cir. 1994) (majority); Cole v. Neb. State Bd. of Parole, 997 F.2d 442, 444 (8th Cir. 1993); Archie v. City of Ravine, 847 F.2d 1211, 1217 (7th Cir. 1988); McKinney v. George, 726 F.2d 1183, 1187 (7th Cir. 1984).
246. People v. McKay, 41 P.3d. 59, 83-84 (Cal. 2002).
state action is mistaken, as evidenced by some courts' examination of state law compliance. In *Wolf v. Colorado*, the Supreme Court determined that the federal constitution, through the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers because the rights of privacy against arbitrary police intrusion are implicit within "the concept of ordered liberty" and enforceable against the states through incorporation into the Fourteenth Amendment. In *Mapp v. Ohio*, the Court decided that the reasonableness standard of the Fourth Amendment should apply to states with the same degree of enforceability under the Fourteenth Amendment. However, the Court minimized the reach of its holding, declaring that federal courts are not to assume a supervisory role over state courts and that there is no "obliteration of state laws relating to arrests and searches in favor of federal law." Moreover, in a federal prosecution, "the test is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed." In *Mapp*, the Court gen-

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249. 367 U.S. 643. In *Mapp*, the Supreme Court held that the exclusionary rule applies to the states through the Fourteenth Amendment when an officer violates a defendant's constitutional rights when effectuating a search for evidence. *Id.* at 660. The Court stated:

Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

*Id.*
250. *Id.* at 655.
251. *Ker v. California*, 374 U.S. 23, 31 (1963) ("[T]he lawlessness of arrests for federal offenses is to be determined by reference to state law insofar as it is not violative of the Federal Constitution. *A fortiori*, the lawfulness of these arrests by state officers for state offenses is to be determined by [state] law."). *Id.* at 37.
252. *Id.* at 31 (quoting *Elkins v. United States*, 364 U.S. 206, 221 (1960)) (internal quotation marks omitted). The Court stated:

A healthy federalism depends upon the avoidance of needless conflict between state and federal courts by itself urging that federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches.

*Id.* See also *Mapp*, 367 U.S. at 658.
erally decided that, although a search or seizure may violate a state law, states are free to make laws that are more restrictive than what the Fourth Amendment provides all individuals.\textsuperscript{254} If the Fourth Amendment's probable cause requirement for making an arrest and the reasonableness of the search or arrest are both satisfied,\textsuperscript{255} a federal claim of a violation of a defendant's Fourth Amendment constitutional rights does not exist when a state law is accordingly violated.\textsuperscript{256} However, the Court never determined the "unreasonableness" of these state statutory violations, raising the following problem:

\begin{quote}
[Whether or not the Fourth Amendment is [a] basis of exclusion, and even when it is reasonably apparent that exclusion has resulted from failure to comply with a state or court rule there will often remain the uncertainty of whether the rule or statute itself states a constitutional requirement so that . . . the violation may be said to be of constitutional dimension.\textsuperscript{257}
\end{quote}

\begin{center}
\textsuperscript{254} Mapp, 367 U.S. at 658-60.
\textsuperscript{255} The Fourth Amendment's protection from unreasonable searches and seizures is the very essence of an individual's constitutional liberty and is "as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen." Ker, 374 U.S. at 32. The standards of reasonableness under the Fourth Amendment are not restricted when carried into the realm of state law through the Fourteenth Amendment. Id at 33. However,
\end{center}

\begin{quote}
[A]lthough the standard of reasonableness is the same under the Fourth and Fourteenth Amendments, the demands of our federal system compel us to distinguish between evidence held inadmissible because of [the Supreme Court's] supervisory powers over federal courts and that held inadmissible because prohibited by the United States Constitution . . . . [R]easonableness of a search in the first instance [is] a substantive determination to be made by the trial court from the facts and circumstances of the case and in the light of the 'fundamental criteria' laid down by the Fourth Amendment and in the opinions of [the Supreme Court] applying that Amendment. Findings of reasonableness . . . are respected only insofar as consistent with federal constitutional guarantees. . . . The states are not . . . precluded from developing workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law enforcement' in the States, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures and the concomitant command that evidence so seized is inadmissible against one who has standing to complain.
\end{quote}

\begin{center}
Id. at 33-34.
\end{center}

\begin{quote}
\textsuperscript{256} The defendants in Ker argued that, even though the officers had probable cause to make the arrest, the officers violated statutory authority and therefore, the arrest was invalid and the fruits of the arrest should be excluded. Id. at 37. The Court announced that "the lawfulness of arrests for federal offenses is to be determined by reference to state law insofar as it is not violative of the Federal Constitution." Id. (citing United States v. Di Re, 332 U.S. 581 (1948); Johnson v. United States, 333 U.S. 10 (1948)). The Court examined whether the method of home entry, although violative of the state law, offended federal constitutional standards of reasonableness. Id. at 37-38. It held the method of entry did not violate the Fourth Amendment's reasonable standard. Id. at 38. The Court stated that the exigent circumstances of destroying evidence provided the officers with a reason to enter the house furtively and that exigent circumstances were an exception to the California state law that officers must demand admission and announce their purpose of being there before entering the dwelling. Id. at 39-40.
\end{quote}

\begin{center}
\textsuperscript{257} See 1 LAFAVE, supra note 192, at 129.
\end{center}
Probable Cause is not Synonymous with "Reasonableness"

At the outset, even if a police officer has probable cause to make an arrest or to search for evidence, the Supreme Court itself determined that some searches and seizures require more than just probable cause. In *Winston v. Lee*, the Court held that an unauthorized surgical procedure to remove a bullet for evidence, even when based on probable cause, was "unreasonable" under the Fourth Amendment. In *Winston*, the defendant allegedly robbed a shop and was shot in the left shoulder by the shopkeeper. Blocks later, the police came across a man with a gunshot wound in his left shoulder and took him to the hospital. The shopkeeper subsequently identified the man as the armed robber. The police then had probable cause to believe the defendant was the armed robber, but they wanted the bullet for ballistics testing. Although the victim's identification of the defendant satisfied probable cause, the Court decided that the lack of exigent circumstances and the availability of other evidence overrode the probable cause basis for the surgical search and seizure of the bullet. The Court declared, "Notwithstanding the existence of probable cause, a search for evidence of a crime may be unjustifiable if it endangers the life or health of the suspect." Although *Winston* was about unauthorized bodily intrusion, the case demonstrates that probable cause does not automatically make a search or seizure "reasonable." Even with existing probable cause, in some situations, state or police action may still be constitutionally unreasonable.

Along with illustrating that the existence of probable cause does not always equal "reasonableness," compliance with state law, in certain instances, is necessary for certain state actions to be "reasonable." These situations include the following: (1) inventory searches; (2) administrative inspections of housing and private commercial property; (3) search incident to arrest; and (4) warrantless home entry to facili-

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258. See *Winston v. Lee*, 470 U.S. 753 (1985). Cf. *Schmerber v. California*, 384 U.S. 757 (1966) (holding that a state may, over a suspect's protest to a DUI, have a physician extract blood from the person without violating the suspect's right not to be subjected to unreasonable searches and seizures, because of the existence of exigent circumstances).
260. *Id.* at 766.
261. *Id.*
262. *Id.*
263. *Id.*
264. *Id.*
266. *Id.* at 761.
tate an arrest. The reasoning in these situations is applicable to unauthorized extra-jurisdictional arrests.

i. Inventory proceedings

Police inventory proceedings during booking must conform to "established inventory procedures." In Illinois v. Lafayette, the Supreme Court rejected an arrested defendant's argument that a warrantless search of her handbag during the booking process was unreasonable under the Fourth Amendment. The Court would not "second-guess police departments as to what practical administrative method will best deter theft by and false claims against its employees and preserve the security of the station house." Based on the Court's opinion, state procedure governs the Fourth Amendment "reasonableness" of any inventory proceeding and police must follow proper governmental administration pursuant to "standardized procedures" or "reasonable legislative or administrative standards." If state administrative statutes regulate how these searches and inspections are to be conducted, then compliance is necessary when determining if an inventory proceeding is "reasonable."

ii. Administrative searches

Courts examine state statutory compliance when determining the "reasonableness" of an administrative search. Like inventory proceedings during booking, an administrative search must also conform to "standardized procedures" or "reasonable legislative or administrative standards." In Marshall v. Barlow's, Inc., the Supreme Court determined that the Occupational Safety and Health Act (OSHA) was unconstitutional when it allowed agents to search a work area of any employment facility for safety hazards and violations without a warrant or its equivalent. In Barlow's, Inc., OSHA allowed Secretary of Labor agents to search any employment facility within their jurisdiction without a search warrant. The Secretary of Labor argued that warrantless inspections to enforce OSHA are reasonable

267. See infra notes 268-355 and accompanying text.
269. Id. at 640.
270. Id. at 641.
271. Id. at 648.
272. See 1 LAFAVE, supra note 192, at 140.
273. Id.
275. Id. at 325.
276. Id. at 309.
under the Fourth Amendment, but the Court balanced the competing Fourth Amendment interests and disagreed.

Moreover, in *New York v. Burger*, the Court extended the warrant requirement in *Barlow's, Inc.*, holding that when a state statute authorizes an administrative search, a warrant is not required, and the search will be reasonable. In *Burger*, the defendant owned a vehicle dismantling shop. A New York statute authorized state administration officials or police officers to inspect, on a regular basis and without a warrant, any vehicle dismantling business. The defendant was charged for certain crimes arising out of the warrantless police administrative inspection authorized by the statute. The Court determined that the state statute provided "a constitutionally adequate substitute for a warrant." As a result of these two cases, an administrative search requires either a warrant or an authorizing state statute. If a warrant is not obtained, then compliance with state statutes must be considered in order for the administrative search to be constitutionally "reasonable" under the Fourth Amendment. Therefore, sitting courts do consider compliance with state regulations in deciding the "reasonableness" of warrantless administrative searches.

iii. Searches incident to arrest

State statutory construction and compliance is important when deciding the "reasonableness" of a search incident to arrest. As Wayne LaFave explains, a search incident to arrest can be examined as a "standardized procedure" rather than a Fourth Amendment probable cause issue. In *Knowles v. Iowa*, the Supreme Court held that a search incident to an arrest, in which a state statute did not authorize the arrest, violated a defendant's Fourth Amendment rights. In

277. *Id.* at 311.
280. *Id.* at 711.
281. *Id.*
282. *Id.* at 694-95.
283. *Id.*
284. *Id.* at 711.
286. *Id.*
287. *Id.* at 235 (citing United States v. Robinson, 414 U.S. 218 (1973), in which the Supreme Court held that a person may be searched incident to his arrest without regard to the probability that he is carrying weapons or contraband).
289. *Id.* at 118-19.
Knowles, an officer stopped the defendant for speeding and issued a citation rather than arresting him.\textsuperscript{290} A state statute authorized an officer to make an arrest or, in lieu of arrest, to issue a citation for a traffic offense.\textsuperscript{291} If an officer elects to issue a citation, the officer may still conduct a search of an automobile.\textsuperscript{292} The Court decided that, regardless of the authorizing statute, if an officer decides to issue a citation in lieu of an arrest, he or she may not subsequently conduct a valid search incident to the arrest because no arrest occurred.\textsuperscript{293}

In \textit{Atwater v. City of Lago Vista},\textsuperscript{294} a defendant was arrested for a minor seatbelt traffic violation. State law authorized a warrantless arrest for a seatbelt violation.\textsuperscript{295} The defendant argued that the arrest for such a minor traffic offense violated her Fourth Amendment rights.\textsuperscript{296} The Court disagreed, noting that the officer had probable cause to arrest the defendant and that the state granted its officers statutory arrest authority for this particular offense.\textsuperscript{297}

In \textit{United States v. Mota},\textsuperscript{298} the United States Court of Appeals for the Ninth Circuit held: "[I]t is clear that state law governing arrests is relevant to assessing the constitutionality of a search incident to that arrest."\textsuperscript{299} In \textit{Mota}, the defendant was arrested after officers found him operating a corn cart without a valid business license.\textsuperscript{300} Upon a search incident to arrest, the officers discovered forty-one counterfeit bills.\textsuperscript{301} The defendant motioned to suppress the counterfeit bills arguing that the officers lacked authority under California law to arrest the defendant for a mere criminal infraction; therefore, the search, which uncovered the counterfeit bills, was unconstitutional.\textsuperscript{302} The Ninth Circuit announced that the application of the exclusionary rule in federal court does not turn on compliance with state law and should focus on conformity with federal law.\textsuperscript{303} However, "\textit{this does not nec-
iv. Warrantless home entry to execute an arrest

Finally, courts consider state statutes when determining the "reasonableness" of a warrantless home entry to effectuate an arrest. In *Welsh v. Wisconsin*, the Supreme Court examined the Fourth Amendment "reasonableness" of a warrantless home arrest by balancing the legitimate governmental interest in an arrest against the degree of intrusiveness in an individual's privacy and personal freedom. In *Welsh*, the defendant was suspected of driving under the influence (DUI), a nonjailable offense in that state. Police officers, armed with probable cause, initiated a warrantless nighttime home entry to arrest the defendant. The Court examined the Wisconsin state law classification of DUI in considering the "reasonableness" of the warrantless home arrest. The Court found that a nighttime warrantless home entry to arrest a DUI suspect, classified as a civil traffic offense in Wisconsin, violated the Fourth Amendment, even when probable cause and exigent circumstances existed. In this decision, the Court adopted a common sense approach to Fourth Amendment reasonableness when dealing with arrests and exigent circumstances.

However, a comparison of *Welsh v. Wisconsin* to *Stark v. New York State Department of Motor Vehicles* is necessary to appreciate the importance of state law when determining the constitutional "reasonableness" of police action. In *Stark*, police officers observed a defendant driving erratically and concluded that he was driving under the influence of alcohol. The officers followed the automobile to the defendant's home and watched him pull into his garage and shut the

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304. *Mota*, 982 F.2d at 1387 (emphasis added). The court used inventory searches as an example. *Id.* It stated that, under federal law, inventory searches "must be conducted in accordance with the official procedures of the relevant state or local police department." *Id.* (quoting United States v. Wanless, 882 F.2d 1459 (9th Cir. 1989)) (internal quotation marks omitted).


306. *Id.* at 746.

307. *Id.*

308. *Id.* at 750 ("When the government's interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate."). *See also United States v. Lewis*, 183 F.3d 791, 795 (8th Cir. 1999).


310. *Id.* at 753.


312. *Id.* at 825.
The defendant’s wife permitted the officers inside the home without a warrant. The officers found the defendant lying in bed and stinking of alcohol. The defendant refused an alcohol breathalyzer test and was arrested for DUI. The defendant argued, citing Welsh, that the arrest was invalid because a warrantless home arrest for DUI violated his Fourth Amendment right to be free from unreasonable searches and seizures. A New York appellate court disagreed, holding that the officer’s conduct was “reasonable” because probable cause and exigent circumstances existed and because New York law made first offense DUI a misdemeanor punishable by less than one year in prison. Citing Welsh, the court determined that “the penalty imposed by a State for a particular offense was ‘the best indication of the state’s interest in precipitating an arrest.’” The court compared the punishment for first offense DUI in New York to the punishment for first offense DUI in Wisconsin. Based on this comparison, the court held that, with probable cause and exigent circumstances, the arrest was valid because New York’s classification of DUI was more stringent than Wisconsin’s classification of DUI. By allowing a punishment of less than one year in prison for first time DUI offenses, the New York Legislature demonstrated a dedication to curbing DUI offenses.

v. Other situations in which state statute is examined

Other Supreme Court cases suggest that complying with state law is important in certain determinations of Fourth Amendment “reasonableness.” In Michigan v. DeFillippo, the Supreme Court stated: “Whether an officer is authorized to make an arrest [will] ordinarily depend[ ] in the first instance, on state law.” Moreover, in United States v. Di Re, the Court examined a New York arrest statute and

313. Id.
314. Id.
315. Id.
316. Id.
318. Id. at 826.
319. Id.
320. Id.
321. Id.
323. Id. at 36 (citing Ker v. California, 374 U.S. 23, 37 (1963)); Johnson v. United States, 333 U.S. 10, 15 n.5 (1948)). Some courts, albeit in obiter dictum itself, hold this statement as mere dicta because the defendant did not contend that his arrest was unauthorized by state law. See People v. McKay, 41 P.3d 59, 67-68 (Cal. 2002).
324. 332 U.S. 581 (1948).
held that "in absence of an applicable federal statute the law of the state where an arrest without warrant takes place determines its validity."\textsuperscript{325} The Court continued, "[t]here is no reason to believe that state law is not an equally appropriate standard by which to test arrests without [a] warrant, except in those cases where Congress has enacted a federal rule."\textsuperscript{326} Furthermore, in \textit{Ker v. California},\textsuperscript{327} a plurality of the Court held that although an officer's entry into a house when effectuating an arrest violated a state law, under the circumstances, the arrest was not unreasonable for Fourth Amendment purposes.\textsuperscript{328} However, the Court stated:

[T]he lawfulness of arrests for federal offenses is to be determined by reference to state law insofar as it is not violative of the Federal Constitution. A fortiori, the lawfulness of these arrests by state officers for state offenses is to be determined by California [state] law.\textsuperscript{329}

\textsuperscript{325} Id. at 589-90.

\textsuperscript{326} Id. (emphasis added). \textit{Di Re} involved a defendant who was arrested for the misdemeanor of knowingly possessing counterfeit gasoline rationing coupons. \textit{Id.} A New York State officer was accompanied by federal officers, who received a tip from an informer that the defendant was carrying counterfeit gasoline rationing coupons, and they acted on that tip following the defendant. \textit{Id.} at 582. When the defendant stopped, the state police officer went up to the car and saw the informer in the back seat with some coupons in his lap. \textit{Id.} The informer said he got them from the driver, who sat next to the defendant. \textit{Di Re}, 332 U.S. at 582. The state officer frisked the defendant for weapons and then arrested, without a warrant, all three men. \textit{Id.} At the jail, the officers found over one hundred coupons on the defendant. \textit{Id.} at 583. There was no federal statute controlling the warrantless arrest by an officer. \textit{Id.} at 591. The Court looked back to common law and discussed the notions of when an officer can make a warrantless arrest for a misdemeanor and when an officer can make a warrantless arrest for a felony. \textit{Id.} Here, the defendant was arrested for a misdemeanor, which had not occurred in the presence of the arresting officer. \textit{Id.} Therefore, the Court held the warrantless arrest by the officer illegal and suppressed the fruits of that unlawful arrest. \textit{Di Re}, 332 U.S. at 592-93.

However, some courts, albeit in \textit{obiter dictum} itself, and commentators argue, perhaps rightly so, that \textit{Di Re} was not based on a constitutional compulsion but was a case of statutory construction. See \textit{People v. McKay}, 41 P.3d 59, 67 (Cal. 2002) (Therefore, it fell directly within the Supreme Court's supervisory power on the issue of the choice of law by which to measure the validity of arrests in federal prosecutions.). See also 1 \textit{LaFave, supra} note 192, at 138; 2 \textit{William E. Ringel, Searches & Seizures, Arrests and Confessions} 23-71 (2d ed. 1979).

\textsuperscript{327} 374 U.S. 23, 33-36 (1963). In \textit{Ker}, a California state law permitted officers to break into a dwelling place for the purpose of arrest after demanding admittance and explaining their purpose for being there. \textit{Id.} The officers in \textit{Ker} violated the state law by obtaining a pass key from the apartment super, unlocking the defendant's apartment door, opening the door quietly, proceeding quietly into the defendant's living room and subsequently identifying themselves and providing the reason for being there. \textit{Id.} The district court held, with the United States Court of Appeals for the Second Circuit affirming, that there was probable cause for the arrest and that the entry into the residence was for the purpose of making an arrest and was not unlawful. \textit{Id.}

\textsuperscript{328} \textit{Id.} at 40-41.

\textsuperscript{329} \textit{Id.} at 37 (citations omitted). Some courts hold, albeit in \textit{obiter dictum}, that this statement too was merely dicta because the police in \textit{Ker} had complied with California's state arrest law. See \textit{People v. McKay}, 41 P.3d 59, 67 (Cal. 2002).
Some judges argue that this line of Supreme Court decisions supports the notion that certain state arrest statutory violations can contemporaneously violate a defendant's Fourth Amendment rights. For example, in United States v. Lewis, a concurring judge argued, "[s]ince we are dealing with an arrest by Minneapolis police officers for a violation of a Minneapolis ordinance, the federal court should not sanction an explicit violation of the governing laws as defined by the legislature and courts of the State of Minnesota." Moreover, the concurring opinion found that the Supreme Court has suggested, "state law should play an ancillary role (to federal constitutional law) in assessing whether an officer has made a lawful custodial arrest." In Lewis, an officer arrested the defendant after witnessing the defendant holding an open container of liquor in public, a misdemeanor in Minnesota. The officer conducted a search incident to arrest and found drugs on the defendant's person. The defendant argued that the officer was not authorized by Minnesota law to arrest the defendant for only a misdemeanor in this situation, and therefore the evidence seized should be suppressed. The majority relied on stare decisis, determining that the inquiry was not whether the arrest was valid under state criminal procedure, but whether the arrest was valid under federal law.

In United States v. Bradley, the United States Court of Appeals for the Sixth Circuit examined state law and determined that a consented search of a defendant's home was tainted after he was unlawfully arrested in violation of state arrest law. The court scrutinized

330. 183 F.3d 791 (8th Cir. 1999).
331. Id. at 795 (Heaney, J., concurring) (citing State v. Varnado, 582 N.W.2d 886 (Minn. 1998)).
332. Id. at 796 (Heaney, J., concurring) (citing Michigan v. DeFillippo, 443 U.S. 31 (1979)).
333. Id. at 792.
334. Id.
335. Id. at 793. Minnesota Rule of Criminal Procedure 6.01 allows for custodial arrests for misdemeanors only when it reasonably appears that arrest is necessary to avoid bodily harm to the defendant, another person, when there could be a furtherance of criminal conduct, or when there is a substantial likelihood that the accused will fail to respond to a citation. Lewis, 183 F.3d at 793 n.5. In this situation, the defendant argued that the officer should have issued a citation and was not authorized to arrest because no circumstances described in the state ordinance were present. Id.
336. Id. at 793-94 (citing United States v. Bell, 54 F.3d 502 (8th Cir. 1995)).
337. Id. at 794.
338. 922 F.2d 1290 (6th Cir. 1991).
339. Id. at 1296. In Bradley, the defendant was indicted by a grand jury for possession of narcotics. Id. at 1291. Tennessee state law requires all home arrests to be effectuated per a valid arrest warrant, not a copy of the indictment establishing probable cause to arrest. Id. at 1293. Officers went to the defendant's residence and effectuated an arrest without an arrest warrant only relying on the indictment in direct violation of Tennessee law. Id. at 1295. The officers
Tennessee state criminal procedure, the totality of the circumstances in the case, and the flagrancy of the officers’ conduct and held that drug evidence seized from a contemporaneous search of the defendant’s home should be suppressed.\textsuperscript{340} In \textit{United States v. Richardson},\textsuperscript{341} the Tenth Circuit enunciated that federal courts are to “conduct an independent inquiry . . . apply[ing] federal law . . . [into] the reasonableness of a state search,” but that federal courts “are not prohibited from considering state law, although such consideration may not enlarge nor diminish federal law.”\textsuperscript{342}

b. State Law Compliance is Relevant to Constitutional Reasonableness

Based on the above reasoning, state law compliance in many circumstances directly determines the constitutional reasonableness of police action. As seen from comparing \textit{Welsh} to \textit{Stark}, state classification of crimes certainly affects the constitutional reasonableness of police conduct. Moreover, state procedures for inventory proceedings and administrative searches also determine the constitutional reasonableness of police conduct. Finally, the state classification of arrest procedures directly determines whether a search incident to an arrest is constitutionally reasonable. Therefore, the reasonableness of police conduct, in some circumstances, will directly revolve around state law. What is constitutionally reasonable in one state is not necessarily constitutionally reasonable in another state.\textsuperscript{343}

When analyzing extra-jurisdictional arrest, to hold that an unlawful extra-jurisdictional arrest is not constitutionally unreasonable is inconsistent with the above analysis when, in fact, state law can control the constitutional reasonableness of some police action altogether.\textsuperscript{344} To rely on “federalism” and to determine that constitutional reasonableness does not depend on state law compliance is inaccurate. For this reason, many majority opinions have been accompanied by strong concurring\textsuperscript{345} and dissenting opinions.\textsuperscript{346}

\textsuperscript{340} Bradley, 922 F.2d at 1296.
\textsuperscript{341} 86 F.3d 1537 (10th Cir. 1996).
\textsuperscript{342} \textit{Id.} at 1544 (emphasis added) (citations omitted).
\textsuperscript{344} \textit{See supra} notes 247-343 and accompanying text.
\textsuperscript{345} These concurrences merely agree with the majority because of stare decisis, but implore the court to reexamine its previous positions.
\textsuperscript{346} \textit{See supra} notes 247-343 and accompanying text.
For example, in Abbott v. City of Crocker, Judge Richard S. Arnold argued that compliance with state arrest statutes is relevant in determining whether the officer's conduct in question is reasonable under the Fourth Amendment. He believed that a court must determine whether the violated extra-jurisdictional arrest statute is designed to protect individuals from police behavior that would otherwise be unreasonable. A violation of some state arrest law may not be a per se violation of the federal constitution, but may be unreasonable depending on the circumstances in each case. Dissenting in People v. McKay, California Supreme Court Justice Brown argued that probable cause is not synonymous with reasonable conduct. Therefore, only by balancing the legitimate governmental interests against the degree of intrusiveness upon an individual's privacy would the reasonableness of any unlawful arrest be resolved. Finally, in Ross v. Neff, the majority believed that even if an officer thought he or she could legally effectuate an extra-jurisdictional arrest, his or her belief only lent itself to a qualified immunity defense and not to the underlying unreasonableness of the officer's unlawful extra-jurisdictional arrest.

IV. IMPACT: COULD AN UNLAWFUL EXTRA-JURISDICTIONAL ARREST BE AN UNREASONABLE SEIZURE UNDER THE FOURTH AMENDMENT?

The Fourth Amendment does not require a warrant when effectuating an arrest in public, even if no exigent circumstances exist. Even though a public arrest based on probable cause may be valid, some arrests can still be unreasonable under the Fourth Amendment. There is a split between federal court majority and minority decisions when deciding whether state statutory compliance should balance on arrest reasonableness. In some situations, courts conclude that compliance with state arrest laws directly affect the constitutional rea-

347. 30 F.3d 994 (8th Cir. 1994).
348. Id. at 999.
349. Id. at 1000.
350. Id.
351. 41 P.3d 59 (Cal. 2002).
352. Id. at 84 (Brown, J., dissenting).
353. Id.
354. 905 F.2d 1349 (10th Cir. 1990).
355. Id. at 1354-55; see also Dunn v. City of Elgin, 347 F.3d 641, 651-52 (7th Cir. 2003).
357. See supra notes 247-350 and accompanying text.
358. See supra notes 225-350 and accompanying text.
In other cases, these same courts refuse to examine state law compliance when determining the constitutional reasonableness of arrest conduct. When deciding the "reasonableness" of an unlawful extra-jurisdictional arrest, courts tend to follow the later of these two, refusing to inquire into state law compliance. However, the Fourth Amendment's "reasonableness" requirement commands a balancing of the government's legitimate interests versus an individual's interest in being free from unreasonable government intrusions, personal liberty, and individual privacy. This section will attempt to illustrate how, in some circumstances, a flagrant violation of an extra-jurisdictional arrest statute can contemporaneously be constitutionally unreasonable. This section will balance the competing interests at issue—weighing the government's protection of society versus individual freedom from unreasonable governmental action and personal autonomy.

A. A Fourth Amendment Analysis of Unlawful Extra-Jurisdictional Arrests

The Supreme Court has held that in any Fourth Amendment case:

[When] determining whether a particular governmental action violates [the Fourth Amendment], we inquire first whether the action was regarded as an unlawful search or seizure under the common law when the Amendment was framed. Where that inquiry yields no answer, we must evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.

In deciding extra-jurisdictional arrest cases, not one federal court majority inquired into whether a direct violation of police territorial arrest jurisdiction was unlawful or unreasonable at common law. As evident from the history of police jurisdiction, common law and the American history of arrest jurisprudence recognized police territo-

359. See supra notes 247-350 and accompanying text.
360. See supra notes 225-346 and accompanying text.
361. See supra notes 116-346 and accompanying text.
363. See infra notes 365-380 and accompanying text.
364. See infra notes 381-388 and accompanying text.
366. See supra Part II.D. and accompanying notes.
rial limitation. During the framers' era, society afforded law officials rights similar to those of their English counterparts. Although England moved into an age of official police enforcement at the time of America's founding, American police officers remained separated with official jurisdiction only over their respective towns. Even if an archeological dig into police jurisdictional history does not reveal the framers' true beliefs on police jurisdiction, courts must balance an individual's privacy interests against the legitimate governmental interests.

All states have ratified territorial statutes limiting law enforcement capacity to circumscribed areas. Additionally, states have codified and recognized exceptions to territorial limitations with laws encompassing common law doctrines such as high pursuit and citizens' arrest. When a state police officer effectuates an extra-jurisdictional arrest flagrantly against state law, and no common law or state statutory exception applies, courts should inquire into the constitutional reasonableness of this police action. State statutory compliance is already an important factor when determining the reasonableness of inventory proceedings, administrative searches, search incident to arrest, and the validity of a warrantless arrest based on exigent circumstances. Compliance with state extra-jurisdictional law should be a relevant factor when considering the reasonableness of an officer's unlawful extra-jurisdictional arrest.

Courts determine whether an officer's conduct is "reasonable" by asking whether "'a [person] of reasonable caution [would believe]' that the action taken was appropriate," in light of the particular circumstances of each case, and based on the facts available to the officer at the moment of the search or seizure. That reasonable person, in extra-jurisdictional arrest cases, is a reasonable police officer. Yet, reasonable police officers should necessarily recognize the

367. See, e.g., Commonwealth v. Leet, 585 A.2d 1033, 1045 (Pa. Super. Ct. 1991) ("When the sheriff's office was transplanted from England to the colonies, including Pennsylvania, its common law role as the primary peace officer of his bailiwick was not substantially altered.").
368. See supra notes 66-77 and accompanying text.
369. See supra notes 78-113 and accompanying text.
370. See supra notes 78-113 and accompanying text.
371. See supra notes 221-351 and accompanying text.
372. See supra notes 220-350 and accompanying text.
373. Terry v. Ohio, 392 U.S. 1, 22 (1968) ("Simple 'good faith on the part of the arresting officer is not enough.' . . . If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers and effects,' only in the discretion of the police.") (quoting Beck v. Ohio, 379 U.S. 89, 97 (1964)).
374. Id.
jurisdictional territory laws of their state and their respective jurisdictions.

Moreover, even if an officer effectuates an unlawful, and, perhaps, unreasonable—based on the reasonable person standard—extra-jurisdictional arrest, courts have many statutory and common law exceptions to apply before finding a violation of a defendant's Fourth Amendment rights. For example, in *Pasiewicz*, the defendant invited the forest preserve officers to his place of employment. Therefore, even if the forest preserve officers acted unreasonably in effectuating the defendant's arrest, the exception of consent should apply. In *Abbott*, the police officer pursued the defendant over city jurisdictional lines before making the arrest; however, before holding the police action unreasonable, the court could have disposed of the issue by applying the doctrine of hot pursuit or by deciding whether a valid citizen's arrest had occurred. For every unlawful extra-jurisdictional arrest, an exception could apply. For those situations in which an exception does not apply, the Constitution mandates a balancing of social and individual interests to determine whether police violated a defendant's Fourth Amendment rights. Relying on "federalism" alone effectively disposes of the Fourth Amendment, even if an officer could have acted in a constitutionally unreasonable manner in a particular circumstance.

Even though many courts take an inflexible "federalist" approach when deciding that a violation of a defendant's constitutional rights for flagrant police violations of state arrest statutes are not contemporaneous violations of the Fourth Amendment, some constitutional hope exists. A close reading of *Pasiewicz* and other cases reveals a mitigating clause: "[C]ompliance with state law may well be relevant in determining whether police conduct was reasonable under the Fourth Amendment." This clause indicates that courts are willing to consider flagrant violations of state extra-jurisdictional arrest statutes when considering the reasonableness of police conduct. Yet no

375. See supra notes 78-113 and accompanying text.
376. *Pasiewicz* v. Lake County Forest Pres. Dist., 270 F.3d 520, 527 (7th Cir. 2001).
378. See supra notes 117-168 and accompanying text.
379. *Pasiewicz*, 270 F.3d at 527. See id. ("Such a blatant disregard of state law and the chain of command could weigh on the scales of reasonableness."); *Abbott*, 30 F.3d at 998 ("[T]he question of compliance with state law may well be relevant in determining whether police conduct was reasonable for Fourth Amendment purposes.").
380. The Seventh Circuit reconsidered its subjectively flawed reasoning in *Pasiewicz* in *Dunn* v. City of Elgin, 347 F.3d 641 (7th Cir. 2003). In *Dunn*, two officers unilaterally enforced an out-of-state custody order without court supervision. *Id.* at 644-45. The officers went to the plaintiff's door, knocked, and when she answered, took her child and gave the child to the waiting
court has actually determined when such a consideration would be appropriate.

B. Competing Fourth Amendment Interests Involved in Extra-Jurisdictional Arrests

Judge Arnold, in *Abbott*,\(^3\)\(^8\)\(^1\) attempted to evaluate the competing interests involved in extra-jurisdictional arrests by inquiring into the nature of the state extra-jurisdictional arrest violation and the purpose of the state law at issue.\(^3\)\(^8\)\(^2\) He insisted:

"[T]he question of compliance with state law may well be relevant in determining whether police conduct was reasonable for Fourth Amendment purposes." . . . [E]ven though a violation of state law in the context of an arrest is not a per se constitutional violation, it can be "unreasonable" under the Fourth Amendment, depending on the nature of the violation.\(^3\)\(^8\)\(^3\)

In any extra-jurisdictional arrest, the government's main legitimate interest is the need to protect society from criminal behavior in the most effective and efficient manner. The government should protect society to the best of its ability but should not cross the line that the state legislature, the United States Constitution, and the common law have explicitly drawn.

Police safety is one reason that legislatures regulate a police officer's official capacity to limited territories. When officers effectuate extra-jurisdictional arrests, they immediately put themselves in danger. Officers acting outside their jurisdiction are less familiar with the territory compared to their own locality. Officers may feel more anxiety and stress because of the situation.\(^3\)\(^8\)\(^4\) Because of new surroundings, new people, and an increase in anxiety, a police officer's rational cognitive and decision-making processes may become clouded and convoluted. Police officers could begin to use more emotion in their

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\(^3\)\(^8\)\(^1\) The plaintiff sued and the court distinguished the case from *Pasiewicz*. *Id.* at 649. The court found that the facts of the case made the officer's conduct objectively unreasonable under the federal constitution:

It is not merely the violation of a state statute or the fact that the officers were acting outside of their authority that motivates [the court's] conclusion in this case; it is also the fact that in doing so the officers seized a child without probable cause or exigent circumstances and gave the child to a third-party. All of these factors lead us to find that in this case the officers were objectively unreasonable.

*Id.* at 650. However, at the end of the day, the court awarded qualified immunity to the defendant officers. *Id* at 651.

381. 30 F.3d 994 (8th Cir. 1994).
382. *Id.* at 999.
383. *Id.* at 1000 (quoting United States v. Baker, 16 F.3d 854, 856 n.1 (8th Cir. 1999)).
384. This occurs more often in highly tense and potentially violent situations than it does in standard arrests for minor crimes.
decision-making processes. The ability to handle stressful arrest situations in a logical and peaceful manner is one effective tool officers utilize for their own protection and the protection of others during the arrest procedure.

With an increase in anxiety and a decrease in the ability to make clear, unemotional, and unfettered decisions, comes a direct decrease in society's safety as well. Society, unquestionably, is in further danger when police officers are not familiar with their territory, the people they must deal with on a daily basis, or the general atmosphere of their surroundings. Officers in unfamiliar territory, involved in high-tension situations, may make inaccurate and unwise decisions. This can turn a normal arrest situation into a dangerous one for citizens. Common citizens may be unresponsive to unfamiliar police officers. Moreover, with the lack of experience in a particular area, police officers may make some irrational decisions that could place innocent people, the arrestee, and themselves in danger of bodily injury or even death.

Another reason that legislatures regulate a police officer's official capacity to limited territories is to reduce the risk of danger to the arrestee. Police officers, thinking with high emotion and an impaired sense of judgment, may cause arrestees to act unreasonably. Arrestees who are unfamiliar with police officers from different jurisdictions may make irrational decisions when presented with an intense arrest situation or may try to escape because they do not understand what is happening. Arrestees may not believe that the individual trying to arrest them is an actual police officer. If arrestees are unwilling to be arrested or unfamiliar with their arrestor, the danger level for police brutality or injury to the arrestee increases.

Furthermore, by limiting territorial jurisdiction, legislatures recognize the need to preserve evidence seized. Police officers effectuating

385 Lateef Mungin, Rash of Fake Cops on 'Patrol', ATLANTA J.-CONST., Feb. 21, 2004, at 2E (discussing police imposters in Atlanta's metro area); Eric Hanson, Woman Driver Is Assaulted; Attackers Pose As Police Officers, HOU. CHRON., July 27, 2002, at A37 (discussing the sexual assault of a woman by two police imposters). See also Police Probe Traffic Stop by Man Dressed As Officer, INDIANAPOLIS STAR, June 20, 2002, at B2; Ex-Official Accused of Impersonating Officer, HOU. CHRON., Oct. 12, 2001, at A34; James Thorner, Deputy Impostors Pull Over Motorist in Wesley Chapel, ST. PETERSBURG TIMES, June 11, 1999, at 3; Nicole Sterghos, Dressing the Part May Land Man 30 Years in Prison; Police Impersonator Faces Repeat-Offender Designation, SUN-SENTINEL (FT. LAUDERDALE, FL), June 24, 1998, at B1; Charlene Hager-Van Dyke, Pizzeria Manager Scammed by Caller Pretending To Be Cop; He Called the Eatery to Inform Workers of a Bomb Threat. The Bomb Wasn’t Real, But the Robbery That Followed Was, ORLANDO SENTINEL TRIB., Jan. 7, 1997, at D1; Brad Goldstein, Bogus Cop’s Cop Leaves Officers Searching in Dark, ST. PETERSBURG TIMES, Sept. 8, 1996, at B1; James Dao, Pataki Curbs Unmarked Cars’ Use, N.Y. TIMES, Apr. 18, 1996, at B5.
an arrest in their respective jurisdictions are more familiar with the collection process of critical evidence. This, in turn, leads to more convictions and a more secure society. Police officers know how to collect evidence for the most frequently committed crimes occurring in their jurisdictions. Officers know where to look for critical evidence because of territorial familiarity, the crimes that are committed therein, and the jurisdiction's criminal inhabitants. When officers arrest outside of their territory, what might be a routine arrest within their own territory could turn into an acquittal based on the exclusion of improperly collected evidence.

Finally, a significant, and perhaps the most important, reason that a legislature limits the jurisdiction of police officers is that "smaller communities are unlikely to have the resources to provide their officers with proper training in the elements of probable cause or arrest procedures."\textsuperscript{386} Officers patrolling small rural towns will have different experiences, training, and preparation than narcotics enforcement officers in large, populous cities. Conversely, a large city police officer, assigned to patrol violent neighborhoods could, perhaps, use too much force when effectuating an unauthorized rural arrest. Although interested in protecting society from criminal behavior, the government is also interested in protecting society from extreme, violent, and unbridled police behavior.\textsuperscript{387} By limiting the territory in which police officers can act within their official capacity, legislatures guarantee society "that officer[s] will be sufficiently trained for the types of arrests [most] likely to occur in [their] community."\textsuperscript{388}

\begin{itemize}
\item \textsuperscript{386} Abbott v. City of Crocker, 30 F.3d 994, 1000 (8th Cir. 1994).
\item \textsuperscript{387} An extreme example occurred in Tennessee when a family, along with its two dogs, was returning to South Carolina after visiting relatives. After filling their car with gas, one family member accidentally left his wallet on top of the car. As the family left the gas station, the wallet fell off the car. Witnesses believed there was a carjacking and called police. Police pursued the family on the highway and, subsequently, pulled them over. The driver reached for his wallet. One family member stated: "So I'm expecting the officer to come to my window, but a blaring light comes on and he starts blaring orders over a P.A. system for all the passengers in the car to get out with their hands in the air." The family complied, were handcuffed, and then put in the back of the squad car. As this occurred, the family realized their two dogs were inside the car and asked the police officers to shut the car doors so the dogs would not escape. The officer's ignored their requests and one dog escaped. The dog began wagging its tail and approaching the officer in a non-aggressive manner. The officer reached for a shotgun and unloaded his shotgun in the dog's face while the family pleaded that the dog was friendly and would not hurt the officer. The officer stated in his report, "'I yelled at the dog to get back, but it attempted to circle me to attack, so I felt that I had no option but to protect myself.'" The officer never apologized to the family for his actions. See Family Says Police Killed Their Dog for No Reason (Jan. 8, 2003), at http://www.cnn.com/2003/US/South/01/08/shot.dog/index.html (last visited Apr. 20, 2004); Video Shows Police Killing Dog (2003), at http://www.cnn.com/2003/US/01/09/police.kill.dog/index.html (last visited Apr. 20, 2004).
\item \textsuperscript{388} Abbott, 30 F.3d at 1000.
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Effective law enforcement would not be seriously impaired by requiring police officers to follow their respective state jurisdictional statutes. Allowing defendants, at a maximum, to enforce their federal constitutional right to be free from "unreasonable" police conduct would place the Fourth Amendment, as applied to the states through the Fourteenth Amendment, back to its protectionist position. In many situations, however, when an officer must effectuate an extra-jurisdictional arrest, the exceptions of hot pursuit, citizens' arrest, consent, exigent circumstances, and qualified immunity will likely apply. Hot pursuit and the existence of exigent circumstances would likely cause an officer's conduct, in direct violation of state jurisdictional statute, to be reasonable in light of the totality of the circumstances. Moreover, citizens' arrest is a catch-all safe harbor when no other exception applies. If an officer arrests in the same manner that is available to a common citizen, then no governmental action has occurred and the Fourth Amendment does not apply.

The social policies behind jurisdictional arrest statutes are very important and should be taken into account before a court finds that a direct violation of state jurisdictional arrest statute is not constitutionally unreasonable. This analysis gives an officer ample protection from personal liability. Moreover, the jurisdictional arrest exceptions provide sufficient opportunity to find police conduct reasonable under the totality of many extra-jurisdictional arrest circumstances. However, if in that rare situation no exclusion applies, the Fourth Amendment should protect what it was drafted to protect—individual freedom from unreasonable seizures. By requiring police officers to follow their own respective jurisdictional limitations, courts promote what is considered to be the reason for drafting the Fourth Amendment—curtailing the unbridled use of police discretion. Following this line of reasoning, courts encourage the use of arrest warrants and teamwork involving extra-jurisdictional arrests. Courts would advance a safer society through cooperation instead of renegade police action. Courts would also bring the meaning of the Fourth Amendment back, which required probable cause as well as reasonable police conduct. The social policies involved deserve an examination into whether a direct violation of police extra-jurisdictional arrest, without the existence of any exception, is per se unreasonable police conduct and a violation of a defendant's Fourth Amendment rights. Society is expected to follow legislative rules and constitutional norms; there is
no reason why governmental officials should not be required to do the same.389

Recall Officer Green from the hypothetical arrest situation at the beginning of this Comment. Were Officer Green’s actions objectively reasonable under the Fourth Amendment? What if a suspect or many suspects were killed? What if all the evidence absconded out the back door? What if Officer Green had been killed? What if a child playing in front of the house had been killed? Although probable cause existed for the arrest, is this how society wants its police officers to behave?

There is no bright-line Fourth Amendment rule on unlawful, unwarranted, extra-jurisdictional arrest; nor should there be. Yet, a total blanket of inapplicability based upon the notion that the federal constitution is not the enforcer of state law is inaccurate. In order to appreciate this, a court must separate probable cause from reasonableness. Only upon doing this, will a reviewing court realize that what is constitutionally reasonable in one state may, in fact, be constitutionally unreasonable in another state. This idea is seen when examining inventory and administrative searches, searches incident to arrest, and warrantless home entries to arrest.

Courts recognize the suggestion that state law influences the reasonableness analysis in any extra-jurisdictional arrest case; however, no court takes the next step. No court actually examines the interests at stake. This Comment implores a sitting court to take a trip back in time to determine whether unlawful, extra-jurisdictional arrests were unlawful when the Fourth Amendment was framed. If this search is unfruitful, this Comment implores a sitting court to conduct the balancing act required by the Fourth Amendment: society’s protection versus individual freedom and personal privacy. When a police officer disregards the explicit jurisdictional authority codified within state law, a court should examine the policies behind the violated state extra-jurisdictional statute and determine if any exception to jurisdiction applies. If no exception applies, and the underlying legitimate governmental interests are outweighed by an individual’s right to freedom and privacy, then the officer’s conduct should be constitutionally unreasonable. If, however, individual interests and protections are outweighed by the governmental interests of societal protection, then an officer’s conduct would be constitutionally reasonable under the Fourth Amendment.

The Fourth Amendment is a cornerstone of our Constitution, American society, and the American legal system. Because of its protections, all governmental agents are required to act in a constitutionally reasonable manner.\textsuperscript{390} It is time for a court to determine whether an arrest in direct violation of some state extra-jurisdictional arrest statute is constitutionally reasonable.

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\textsuperscript{390} As Justice Brown succinctly stated in \textit{People v. McKay:}
Requiring police to behave reasonably—i.e., to assess their conduct in light of all the surrounding circumstances—is not asking too much. It is the same burden we impose on every adult. The Constitution demands no less of the government.

\textit{McKay, 41 P.3d at 84 (Brown, J., dissenting).}

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