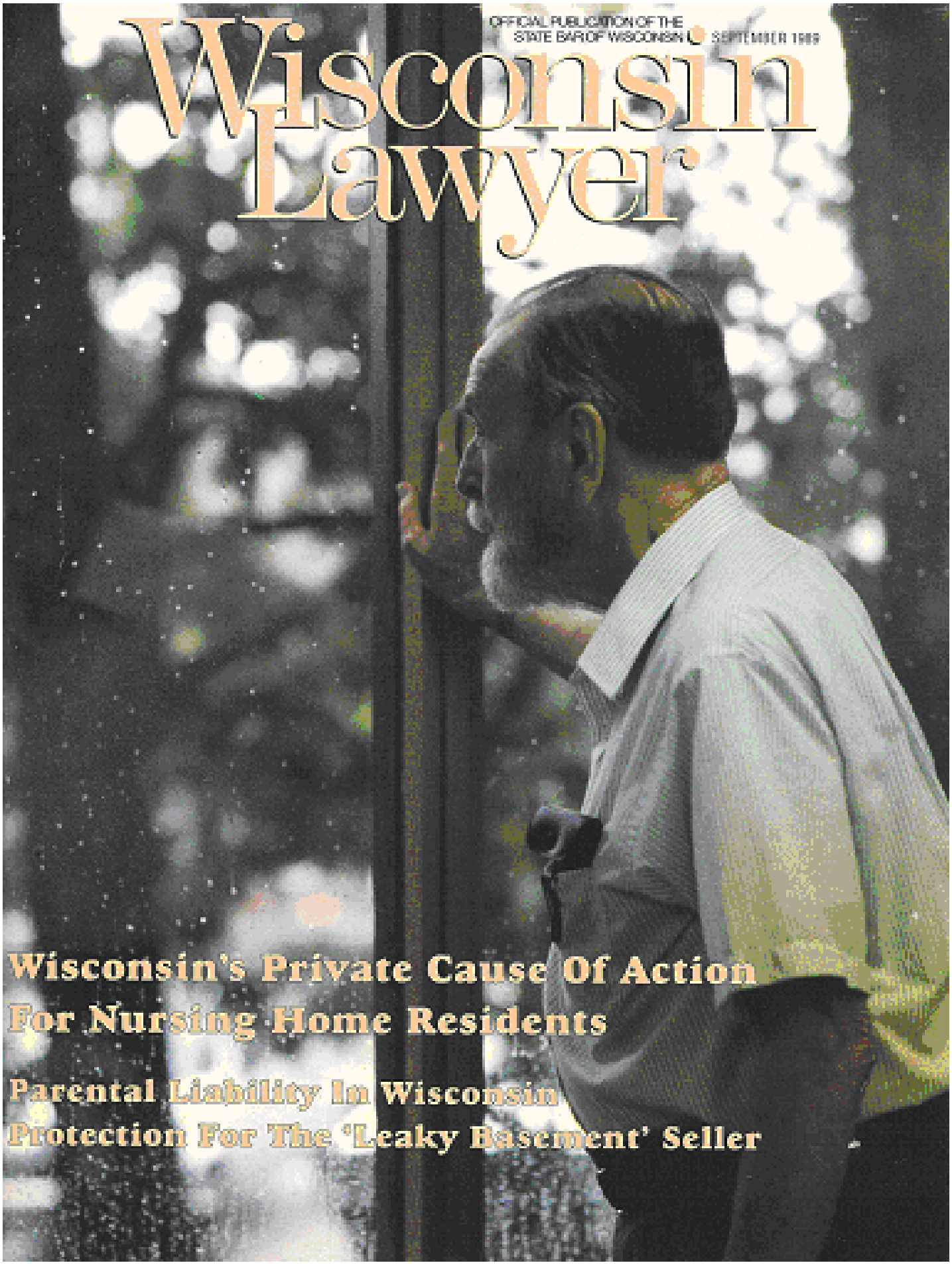
OFFICIAL PUBLICATION OF THE STATE BAR OF WISCONSIN • SEPTEMBER 1989

Wisconsin Lawyer



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STOPS AND ARRESTS outside a municipal officer's jurisdiction

Courts and attorneys often interchange the concepts of fresh pursuit with close pursuit or hot pursuit. But each concept can have distinct and different meanings.

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The Wisconsin courts have never promulgated precise standards defining what police activity can be categorized as "fresh pursuit." Recently, the Wisconsin Court of Appeals in *Brookfield v. Collar*[1] had an opportunity to clarify the law involving the right of municipal police officers to make stops and arrests outside their geographical jurisdiction for violation of ordinances that they are authorized to enforce. This article discusses the guidelines established by the appellate court concerning the issue of fresh pursuit and under what circumstances municipal police officers may make stops and arrests outside their geographical jurisdictions.

Distinction between types of pursuit

Courts and attorneys often erroneously interchange the concepts of "fresh pursuit" with "close pursuit" or "hot pursuit," all of which can have distinct and different meanings.

Police officers of a particular municipality generally have no official power to apprehend violators beyond the geographical boundaries of the municipality for which they are employed unless statutes so provide. Even where municipal police officers are considered state officers, they still are state officers whose powers are territorially limited. Unless extended by statute, officers' power to arrest for offenses committed in their presence applies only while the officers are within their territorial jurisdiction.

Fresh pursuit. "Fresh pursuit" originally involved the concept of a common law right of a police officer to cross extrajurisdictional lines to arrest a felon.[2] However, the theory of fresh pursuit has been expanded by section 175.40 of the Wisconsin Statutes, which extends the right of a police officer when in fresh pursuit to follow anyone in the state for a violation of any ordinance the officer is authorized to enforce.[3] An example of fresh pursuit can be found in *Duenex v. State*,[4] where an officer of the City of Webster Police Department received a radio call reporting that a vehicle had been burglarized at a parking lot about one mile from where he was driving on patrol. The dispatcher had reported the description of two men and the van they were driving, and that they were heading for a road that leads to an interstate highway toward Houston, Texas.

The officer responded to the call by driving to the intersection of the road leading to the interstate. After waiting approximately one minute, he proceeded to the interstate in the belief that the suspects' van already had passed him. The officer then drove six to seven miles from the scene of the burglary, outside of the Webster city limits and into Houston, where he pulled over on the interstate. Shortly thereafter, a van matching the dispatcher's description passed him on the interstate. This occurred within three to five minutes after he first received the dispatcher's call. The officer then followed the van as it drove further into Houston where the officer then

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decided to stop the suspects and arrest them.

In upholding the defendants' arrest for the unauthorized use of the van, the Texas Appellate Court stated the general rule that the authority of city police officers to make a warrantless arrest does not extend beyond the city limits. However, the court stated that the rule is subject to an exception: When city police officers are drawn outside the city limits while in fresh pursuit of a fleeing suspect they do not lose their authority to effect an arrest if they then capture the suspect. In noting that there was no fresh pursuit in the City of Webster itself, the Texas court found there was continuous and uninterrupted pursuit beginning in Webster and culminating in the defendants' arrest just 17 minutes after the officer received the broadcast of the van description.[5]

Close pursuit. The doctrine of "close pursuit" is founded in section 976.04 of the Wisconsin Statutes, which permits police officers of another state to cross into Wisconsin either in pursuit of a suspected felon or in fresh pursuit as defined by common law.[6] An example of close pursuit can be found in *People v. Clark,*[7] wherein the Illinois Appellate Court upheld an arrest made by Illinois police outside their jurisdiction in Missouri even though the arresting officers never sighted the suspects within their own jurisdiction. The Illinois police, who had learned that certain robbery suspects were headed toward a bridge to Missouri, contacted the Missouri police and learned that no Missouri police were in the area near the bridge. The Illinois police then headed into Missouri and captured the suspects. Even though the police did not have the suspects in their sight while in Illinois, the Illinois court noted that without the quick action of the police heading into Missouri the suspects might have escaped. The Illinois court, in upholding the extrajurisdictional arrest, noted that the pursuit was "continuous, uninterrupted and without unreasonable delay."

Pursuant to section 965.04(5) of the Wisconsin Statutes, the concepts of fresh and close pursuit can at times be used interchangeably.[8] That section states that close pursuit includes fresh pursuit as defined by common law. It also includes the pursuit of a person who has committed a felony or is suspected of committing one. Pursuant to section 976.04(5), close pursuit also encompasses a situation where a person is suspected of having committed a felony, although one actually has not been committed, providing there has been reasonable grounds to believe one had. Under this section, close pursuit does not have to be instant pursuit, but it must be without unreasonable delay.

It is important to note that the vast majority of states have adopted laws comparable to section 976.04(5), which sometimes is cited as "The Uniform Act on Close Pursuit."[9]

Hot pursuit. "Hot pursuit" is an evolving Fourth Amendment concept permitting a warrantless entry into a home to effect an arrest only when obtaining a warrant would constitute undue delay. The hot pursuit doctrine encompasses situations where time is of the essence. An example of hot pursuit occurred in *State v. Penas,*[10] where the Nebraska Appellate Court upheld the conviction of the defendant for a third offense of driving while under the influence, despite the warrantless arrest of the defendant in his home.

In *Penas* a municipal police officer observed the defendant driving erratically within the municipal limits. The officer, in a marked squad car, immediately pursued the defendant a short distance. The defendant stopped his vehicle in front of his residence, rapidly exited his car and started toward his house. The officer got out of his vehicle, identified himself as an officer and requested the defendant to stop and come over to the officer. The defendant did not stop, and entered his home. Moments later the officer entered the defendant's home, removed the defendant from the home and, upon the defendant's refusal to perform field sobriety tests, arrested the defendant for operating under the influence of an intoxicant.

In upholding the defendant's conviction, the appellate court ruled that the Nebraska statutes permitted officers to arrest a person without a warrant if they have reasonable cause to believe the person has committed a misdemeanor in the presence of the officer. The defendant's erratic driving and subsequent conduct was sufficient to give the officer reasonable cause to believe the defendant was under the influence. Moreover, the court found the defendant attempted to evade contact with the officer. The court further stated that the circumstance of hot pursuit, which is recognized as an exigent circumstance, renders the acts of the officer valid. The court concluded that a warrantless entry into one's home is valid if police officers enter under exigent circumstances of hot pursuit.[11]

The concept of hot pursuit normally involves arrests at one's home, therefore it is not interchangeable with the concepts of fresh or close pursuit, which involve arrests across jurisdictional boundaries. The doctrines of fresh and close pursuit promote efficient law enforcement by preventing a suspect from thwarting a capture by fleeing across jurisdictional lines. Hot pursuit promotes the protection of a person's Fourth Amendment right by placing limits on police officers who make warrantless entries into suspects' homes to make arrests.

Due to the constitutional considerations, the concept of hot pursuit is applied more restrictively by the courts. For example, in *Welsh v. Wisconsin*[12] the U.S. Supreme Court held that the warrantless night-time entry of the defendant's home to arrest him for a civil, nonjailable traffic offense, was prohibited by the special protections afforded individuals in their homes by the Fourth Amendment. The Court further stated

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Arrests (from page 20)

that a warrantless home arrest for a noncriminal traffic offense cannot be justified on the basis of the hot pursuit doctrine because there had been no immediate or continuous pursuit of the defendant from the scene of the crime. Nor could such an arrest be justified on the basis of a threat to public safety because, in *Welsh*, the defendant already had arrived at home and had abandoned his car at the scene of the accident. This is despite the fact that the defendant's blood alcohol level might have dissipated while the police officer obtained a warrant.

While some courts mislabel and mischaracterize the above concepts, the critical issue is whether the court is dealing with an exception of the Fourth Amendment requirement that an officer obtain a warrant before entering a home to effectuate an arrest (that is, hot pursuit) or whether the court is dealing with a doctrine that permits an officer to cross jurisdictional lines to effectuate an arrest (that is, fresh or close pursuit). The appellate court was faced with the latter in *Collar*.

Facts in *Collar*

Collar[13] involved a City of Brookfield police officer effectuating a stop and arrest approximately one mile into the Village of Elm Grove. The Brookfield police officer initially observed the defendant's vehicle within the Brookfield city limits exceeding the posted speed limits and operating with expired plates. The officer followed the defendant's car for approximately one-half mile and observed the defendant's vehicle weaving within its lane and crossing the centerline on at least two occasions.

Both automobiles stopped for a red light at an intersection separating the City of Brookfield from the Village of Elm Grove. The officer did not turn on her emergency lights or sirens to effectuate a stop for fear that the defendant's vehicle might enter the intersection creating a safety problem. Upon leaving the intersection, the vehicles passed into the Village of Elm Grove. The officer again did not activate her siren or lights because of substantial road construction that presented an unsafe place for a stop. Immediately after passing the construction zone, the officer stopped the vehicle, required the defendant to perform field sobriety tests and then placed the defendant under arrest.

The defendant argued that the Brookfield officer did not have authority to arrest the defendant outside the officer's geographical jurisdiction. The defendant further argued that the evidence obtained from the arrest should be suppressed and the case should be dismissed.

Court rationale and reasoning

In rejecting the defendant's arguments, the *Collar* court relied on section 175.40 of the Wisconsin Statutes, which clearly gives police officers the right, while in fresh pursuit, to follow a suspect anywhere in the state when there has been a violation of any ordinance that the officer is authorized to enforce.[14]

More importantly, the *Collar* court adopted the rationale and guidelines set forth in *Charnes v. Arnold*,[15] a Colorado case that established three criteria to determine whether officers were in fact in fresh pursuit thereby permitting them to arrest outside of their geographical jurisdiction. The *Charnes* court was presented with a hit-and-run accident where the investigating municipal police officer received a description of the driver and a description of the vehicle and its license number. A check on the license number gave the officer the name and address of the registered owner whose address was located in a municipality different than that of the hit-and-run accident. The municipal police officer promptly drove to the owner's address where he observed the suspect driving his vehicle into his driveway. Only 10 to 15 minutes had elapsed between the officer's arriving at the scene of the accident and at the defendant's home. The officer arrested the defendant outside of the officer's geographical jurisdiction.

The Colorado court felt that such an arrest could be lawful only if the officer was in fresh pursuit and that fresh pursuit does not always have to be the Hollywood-style automobile chase with lights and sirens blaring. The three criteria adopted by the Colorado court[16] and followed by the Wisconsin Court of Appeals, are as follows:

1) The police must act without unnecessary delay;[17]

2) The pursuit must be continuous and uninterrupted, but there need not be a continuous surveillance of the suspect or uninterrupted knowledge of the suspect's whereabouts;[18] and

3) A final consideration is a relationship in time between the commission of the offense, the commencement of the pursuit and the apprehension of the suspect. The greater the length of

time, the less likely it is that the circumstances under which the police acted were sufficiently exigent to justify an extrajurisdictional arrest.

In applying the above criteria to the facts in *Collar*, the appellate court reasoned that the Brookfield officer responded immediately to the defendant's suspicious driving. The court deemed reasonable the officer's delay in effectuating a stop or arrest caused by the stop light and the construction zone in light of the officer's safety concern. The court also found that the pursuit was continuous and uninterrupted and that the period of time between the commission of the offense, the commencement of the pursuit and the apprehension of the suspect was very short, spanning several minutes at best.

Conclusion

It is clear from the Wisconsin court's rationale that a municipal police officer need not follow the suspect's exact route to constitute fresh pursuit. Nor is it necessary for police officers to utilize their sirens and lights within their own municipalities to justify an extrajurisdictional arrest. The guidelines established by the *Collar* court offer new direction to Wisconsin circuit and municipal courts when dealing with the issue of extrajurisdictional stops and arrests by municipal police officers. The facts of each case must be scrutinized to determine whether the arresting officer acted without undue delay and in a continuous and uninterrupted pursuit. To determine whether the police actions were sufficiently exigent to justify an extrajurisdictional arrest, the Wisconsin trial courts must consider the time relationship between the commission of the offense, the commencement of the pursuit and the apprehension of the suspect.

Endnotes

[1]No. 88-1101 (Wis. Ct. App., Jan. 25, 1989)(publication ordered March 2, 1989).

[2]*Carlson v. Pape*, 15 Wis. 2d 300, 112 N.W.2d 693 (1961); 4 Am. Jur. *Arrest* § 51.

[3]Wis. Stat. section 62.09(13) gives municipal police officers general authority to arrest, with or without process, every person within the city engaged in any disturbance of the peace or violating any law of the state or ordinance of such city. Section 175.40 (2) and (3) states:

"(2) For purposes of civil and criminal liability, any peace officer may, when in fresh pursuit, follow anywhere in the state and arrest any person for the violation of any law or ordinance the officer is authorized to enforce.

"(3) For purposes of civil and criminal liability, any peace officer outside his or her territorial jurisdiction acting under sub. (2) is considered to be acting in an official capacity while in fresh pursuit under sub. (2), making an arrest under sub. (2) or transporting a person arrested under sub. (2)."

[4]*Duenex v. State*, 735 S.W.2d 563 (Tex. App. Houston (1st Dist.) 1987); *see also State v. Foster*, 60 Ohio Misc. 46, 396 N.E.2d 246 (1979); and *State v. Melvin*, 53 N.C. App. 421, 281 S.E.2d 97 (1981) for further examples of extrajurisdictional arrests under the doctrine of fresh pursuit.

[5]While the Texas Appellate Court characterized the officer's pursuit as "hot pursuit," the case really involved the doctrine of "fresh pursuit." In reviewing cases from other jurisdictions one cannot always rely on the characterizations given by the court. The distinguishing feature is whether the court is dealing with the doctrine that permits officers to go outside their jurisdiction to effect arrests (i.e., fresh pursuit) or whether the court is dealing with the doctrine permitting warrantless entries into one's home to effectuate an arrest (i.e., hot pursuit).

[6]Wis. Stat. section 976.04(1) states: "Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in close pursuit, and continues within this state such close pursuit, of a person in order to arrest him on the grounds that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold in custody such person, as members of a duly organized state, county or municipal peace unit of this state have, to arrest and hold in custody a person on the grounds that he has committed a felony in this state."

[7]*People v. Clark*, 46 Ill. App. 3d 240, 360 N.E.2d 1160 (1977).

[8]Wis. Stat. section 976.04(5) states: "'Close pursuit' as used in this section includes fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It also includes the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there are reasonable grounds for believing that a felony has been committed. Close pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay."

[9]*See* Historical Notes, Wis. Stat. Ann. § 976.04 (West 1985).

[10]*State v. Penas*, 200 Neb. 387, 263 N.W.2d 835 (1978).

[11]*Id., see also State v. Niedermeyer*, 48 Ore. App. 665, 617 P.2d 911 (1980), reaching the same result as *Penas*, wherein the Oregon Appellate Court allowed a warrantless home arrest upon hot pursuit from a commission of a misdemeanor in the officer's presence.

[12]Due to the important Fourth Amendment implications of *Welsh v. Wisconsin*, 466 U.S. 740 (1984), the U.S. Supreme Court granted certiorari. It then vacated the Wisconsin Supreme Court's decision, which had allowed the warrantless entry into the defendant's home to effectuate an arrest for a civil, nonjailable offense.

[13]*Brookfield , supra* note 1.

[14]There was no dispute in *Collar* that the Brookfield police officer was a peace officer as defined in Wis. Stat. section 939.22(22).

[15]*Charnes v. Arnold*, 600 P.2d 64 (Colo. 1979).

[16]*Id.* at 66.

[17]*See Schindelar v. Michaud*, 411 F.2d 80 (10th Cir. 1969).

[18]*United States v. Oaxaca*, 569 F.2d 518 (9th Cir. 1978); *People v. Clark*, 46 Ill. App. 3d 240, 4 Ill. Dec. 785, 360 N.E.2d 1160 (1977); *United States v. Getz*, 381 F. Supp. 43 (E.D. Pa. 1974); and *Reyes v. Slayton*, 331 F. Supp. 325 (W.D. Va. 1971). ■