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STATE V. MCATEER: MUST EXTRAJURISDICTIONAL ARREST AUTHORITY COME AT THE EXPENSE OF POLITICAL ACCOUNTABILITY?

I. INTRODUCTION

A citizen's arrest is characterized as follows: "A private citizen as contrasted with a police officer may, under certain circumstances, make an arrest, generally for a felony or misdemeanor amounting to a breach of the peace."[1] Although this definition might suggest that a police officer is not a private citizen, police officers acting outside their jurisdictions retain their status as private citizens, so any arrests by such officers are citizens' arrests.[2]

In a recent South Carolina case, *State v. McAteer*,[3] an off-duty police officer arrested James McAteer for driving under the influence of alcohol. The court found the arrest to be valid as a citizen's arrest for a misdemeanor involving a breach of the peace.[4] The pivotal points in *McAteer* are whether South Carolina still authorizes citizens to arrest others for breaches of the peace and whether driving under the influence of alcohol constitutes this type of a breach.[5] But as significant as these issues are, the *McAteer* court declined to comment upon one equally important aspect of the case—the officer who arrested McAteer was still in uniform and asserting indicia of state power.[6] Nonetheless, the court declined to categorize the officer's acts as anything more than a citizen's arrest, even though the facts of *McAteer* do not fit the mold of a typical citizen's arrest.

Part II of this Note summarizes the common law rules governing citizens' arrests. Part III summarizes the facts and holding of *McAteer*. Part IV articulates the advantages and disadvantages of *McAteer's* reasoning and result. Finally, Part V analyzes one of *McAteer's* most disturbing implications: it overlooks the importance of political accountability. This Note concludes by suggesting how South Carolina can avoid the potential danger of this implication.

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1. BLACK'S LAW DICTIONARY 244 (6th ed. 1990).

2. *See* State v. Harris, 299 S.C. 157, 159, 382 S.E.2d 925, 926 (1989) (holding that "an officer's right to act as a private citizen beyond his jurisdiction . . . [is] lawful if [it] could be properly undertaken by an ordinary citizen"); 6A C.J.S. *Arrest* § 12 (1975).

3. 333 S.C. 615, 511 S.E.2d 79 (Ct. App. 1998).

4. *Id.* at 624-25, 511 S.E.2d at 84.

5. *See id.* at 616-25, 511 S.E.2d at 80-84.

6. *See id.* at 617, 511 S.E.2d at 80.

II. EVOLUTION OF COMMON-LAW CITIZEN ARREST AUTHORITY

Under English common law, every individual had a duty to either arrest or to "make [an] outcry calling the community to pursue and take" any person committing a felony in the individual's presence.[7] If the felony was not committed in the individual's presence, the law still authorized a private person to make a citizen's arrest if "(1) the felony was actually committed and (2) the private person ha[d] reasonable cause to believe the one he [arrested] committed the felony for which the arrest [was] made."[8]

English common law was less deferential when only misdemeanors were involved. Under the common law, private citizens could arrest individuals committing misdemeanors only when the misdemeanor "involved a breach of the peace [that was] committed *in the presence of* the person making the arrest. In addition, the arrest had to be made at the time of the offense or as soon thereafter as possible."[9] An older treatise on the laws of England elaborated:

> A private person may . . . without a warrant arrest anyone who in his presence commits a breach of the peace, when the breach is still continuing, or, if it is not still continuing, when there is reasonable ground for apprehending a renewal of the breach, or when the offender escapes immediately after committing the breach and is taken on fresh pursuit, which commenced immediately and is continued without a break.
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> A private person may also, it seems, arrest without a warrant anyone who there is reasonable ground for supposing is about to commit a breach of the peace in the presence of such private person.
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> If a breach of the peace has been committed, and there is nothing to show that the offender intends to renew the offence, there is no power at common law to arrest without a warrant.
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> In cases of misdemeanour other than those which amount to a breach of the peace there is, in the absence of statutory

7. State v. Nall, 304 S.C. 332, 337, 404 S.E.2d 202, 206 (Ct. App. 1991).

8. *Id.* at 338, 404 S.E.2d at 206.

9. William A. Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment*, 58 MO. L. REV. 771, 774-75 (1993) (emphasis added) (footnotes omitted).

> authority, no power to arrest without a warrant.[10]

The United States Supreme Court has cited this English common-law principle with approval.[11]

The common law granted police officers the same powers of arrest as citizens, as well as some additional powers. English common law dictated that police officers had the authority to arrest not only "on suspicion of felony, whether a felony ha[d] or ha[d] not been committed," but also "on a reasonable charge of felony being made to him by a private person against anyone else."[12]

Most states have adopted approaches to warrantless arrests similar to those of the English common law.[13] These approaches draw a distinction between truly private citizens' arrests and arrests conducted by police officers:

> [A police officer] is duty-bound to make an arrest whenever there is a violation of the law, but is limited by constitutional requirements (particularly the Fourth Amendment's "probable cause" and "reasonableness"), while a citizen is not duty-bound nor limited by the Fourth Amendment or due process limitations . . . unless the citizen is found to be acting as an agent of the state.[14]

Thus, the states, while patterning their policies after the English common law, recognized the importance of differentiating between arrests made by persons with official state authority and those made by purely private citizens. This distinction is important because police officers are subject to constitutional constraints and greater accountability.

III. *STATE V. MCATEER*

On February 12, 1995, police officer Randolph Thompson was off

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10. 9 THE EARL OF HALSBURY, THE LAWS OF ENGLAND § 610 (1909) (footnotes omitted).

11. *See* Carroll v. United States, 267 U.S. 132, 157 (1925) (stating that an arrest for a misdemeanor not committed in the arresting individual's presence is unlawful) (citing 9 HALSBURY, *supra* note 10, § 612).

12. 9 HALSBURY, *supra* note 10, § 611.

13. M. CHERIF BASSIOUNI, CITIZEN'S ARREST: THE LAW OF ARREST, SEARCH, AND SEIZURE FOR PRIVATE CITIZENS AND PRIVATE POLICE 18-19 (1977) (explaining that most states adopted policies based on the common law as adopted in the United States, which did not require citizens to make arrests like early English common law required).

14. *Id.* at 19.

duty and driving his personal vehicle one-half mile outside Rock Hill's city limits when he observed James McAteer's vehicle sitting in the road.[15] Officer Thompson, still in uniform, got out of his vehicle and watched McAteer drive about 250 yards and turn into a driveway. Officer Thompson, deciding to investigate, approached McAteer's vehicle and noticed open alcohol containers lying in the car and an odor of alcohol exuding from the vehicle.[16] Thompson testified that he was not acting as a police officer in his official capacity at the time, but concedes that McAteer could have been under that impression.[17] Officer Thompson informed McAteer that McAteer could not leave the scene until another police officer arrived. Trooper Suter, a South Carolina Highway Patrolman, arrived at the scene, performed sobriety tests on McAteer, and arrested McAteer for driving under the influence of alcohol.[18]

At trial McAteer and the prosecution stipulated that McAteer was "peacefully detained" by Officer Thompson.[19] "Such a detention constitutes a seizure and is subject to the same protection under the Fourth and Fourteenth Amendments as an arrest."[20] Therefore, McAteer sought suppression of all evidence of his arrest.[21] The trial court denied this motion, and McAteer was convicted of driving under the influence.[22] McAteer appealed, and the South Carolina Court of Appeals affirmed his conviction. After this decision, the full court of appeals decided to rehear the case en banc and again upheld the conviction.[23] The opinion affirming the judgement held that Officer

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15. State v. McAteer, 333 S.C. 615, 617, 511 S.E.2d 79, 80 (Ct. App. 1998).

16. *Id.*

17. Officer Thompson gave the following testimony at trial:

> Q [Defense Counsel]: Were you acting in your authority as a police officer?
> A [Thompson]: No, sir.
> Q [Defense Counsel]: Did you leave him that impression?
> A [Thompson]: I believe so. I can't testify as to what he believed.
> Q [Defense Counsel]: Well, the average citizen, if you walked up to them and you were a police officer and told them you were not going to drive away, they would assume you are acting within the scope of your authority, would that be correct?
> A [Thompson]: Yes, sir. I explained to him that he had to wait until the York County deputy arrived.

Appellant's Brief at 9 n.5.

18. *McAteer*, 333 S.C. at 617, 511 S.E.2d at 80.

19. *Id.* at 618, 511 S.E.2d at 80.

20. *Id.* at 618, 511 S.E.2d at 80-81.

21. *Id.* at 617, 511 S.E.2d at 80.

22. *Id.*

23. *Id.* at 616, 511 S.E.2d at 80. Five judges voted to reverse McAteer's conviction, while four judges voted to affirm. *Id.* In South Carolina, during an en banc proceeding, reversal of the lower court requires six votes, so McAteer's conviction was upheld. *Id.*; *see* S.C. CODE ANN. § 14-8-90(b) (Law. Co-op. Supp. 1998) ("When the Court sits en banc, six of the judges

Thompson's warrantless arrest of McAteer was valid because the common law's authorization of citizens' arrests for misdemeanors involving breaches of the peace had not been modified by any South Carolina statutory or case law and, thus, was still in effect.[24] Furthermore, the court held that driving under the influence of alcohol constituted a breach of the peace.[25] However, the court did not comment on the civil and political accountability issues raised by Officer Thompson's alleged use of official indicia—his police uniform and behavior as an officer—during the arrest.

The dissent asserted that South Carolina was no longer bound by the common-law rule granting citizens arrest authority over misdemeanors because the state had adopted inconsistent law.[26] In addition, the dissent noted that even if the English common-law provision authorizing citizens to arrest for misdemeanors involving breaches of the peace was still in effect, McAteer did not commit a breach of the peace.[27] However, the dissent also failed to comment on the accountability issues raised by Thompson's acting under the color of state authority outside his jurisdiction.

IV. ADVANTAGES AND DISADVANTAGES OF THE *MCATEER* RESULT

The result in *McAteer* is desirable for a number of reasons. First, *McAteer's* holding preserves the common law. Although the United States Supreme Court has not adopted "the notion that 'the "reasonableness" requirement of the Fourth Amendment affords the protection that the common law afforded,'"[28] it has been highly deferential towards English common law, finding it instructive in deciding what is and what is not a reasonable search

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constitute a quorum and a concurrence of six of the judges is necessary for a reversal of the judgment below.").

24. *McAteer*, 333 S.C. at 623, 511 S.E.2d at 84. South Carolina's reception statute provides: "All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect . . . ." S.C. CODE ANN. § 14-1-50 (Law. Co-op. 1976).

25. *McAteer*, 333 S.C. at 624, 511 S.E.2d at 84.

26. *Id.* at 628, 511 S.E.2d at 86 (Conner, J., dissenting); *see also* S.C. CODE ANN. § 17-13-10 ("Upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.").

The dissent also asserted that *Percival v. Bailey*, 70 S.C. 72, 49 S.E. 7 (1904), a case in which a private citizen arrested an individual for disorderly conduct and turned the individual over to the police, was inconsistent with common law because the court invalidated that arrest. *See McAteer*, 333 S.C. at 634-35, 511 S.E.2d at 90. The dissent compared *Percival* to *Loggins v. Southern Railway*, 64 S.C. 321, 42 S.E. 163 (1902), where the court found that a train conductor's duty to arrest an unruly passenger derived from a statute rather than from the common law. *See McAteer*, 333 S.C. at 636, 511 S.E.2d at 90-91.

27. *McAteer*, 333 S.C. at 638-39, 511 S.E.2d at 92.

28. Schroeder, *supra* note 9, at 810 (quoting California v. Acevedo, 500 U.S. 565, 583 (1991) (Scalia, J., concurring)).

and seizure.[29] Furthermore, "[d]ecisions under the common law still provide the basic precedents relied upon by the courts of [this] nation."[30] Thus, in preserving common-law authority, South Carolina preserves the principles of liberty outlined in the Bill of Rights, particularly the Fourth Amendment's command for reasonable searches and seizures, and follows the lead of other courts in using English common law as a touchstone for modern decisions.

Second, a move away from common-law arrest powers is a move "toward less protection for the individual."[31] In fact, a few states have determined that eliminating the breach of peace requirement for citizens' arrests is unconstitutional.[32] Therefore, South Carolina is wise in choosing policies which do not significantly deviate from English common-law precedents.

A third reason the result in *McAteer* is desirable involves the public safety issues surrounding drunk driving. One cannot deny the serious consequences that can flow from driving under the influence of alcohol, and authorizing citizens to arrest drunk drivers generates more manpower in the fight to remove this danger from the streets. Furthermore, allowing private individuals as well as police officers acting outside their jurisdictions to perform such arrests helps maintain general respect for law enforcement and confidence among law enforcement officials themselves. As one commentator noted, "when an offense occurs in a police officer's presence and that officer is powerless to make an arrest, the officer's inaction may generate disrespect for the law and lead to low morale among law enforcement officers."[33]

Although these reasons make the result in *McAteer* desirable, the result brings disadvantages as well. It may escalate road rage. The dissent was justifiably apprehensive about "the prospect of roaming bands of citizens stopping each other for traffic offenses" because "allowing untrained citizens to confront and arrest each other for violations of the traffic laws invites anarchy and potential tragedy."[34] Citizens might violently resist other private

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29. *See* Gerstein v. Pugh, 420 U.S. 103, 114 (1975) (stating that "the common law . . . has guided interpretation of the Fourth Amendment"); California v. Hodari D., 499 U.S. 621, 621 (1991) (looking to common law to determine what constitutes an arrest under the Fourth Amendment).

30. BASSIOUNI, *supra* note 13, at 27.

31. Schroeder, *supra* note 9, at 827.

32. *See id.* at 790.

33. *Id.* at 838. Schroeder stated that "requiring a warrant to arrest for all misdemeanors that do not involve a breach of the peace, even those committed in the officer's presence," would result in this "disrespect" and "low morale." *Id.*; *see also* WAYNE R. LAFAVE, ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY 146 (Frank J. Remington ed., 1965) (implying that not only might an officer decline to perform an arrest if the officer would suffer a loss of public support in conducting that arrest, but he also "might arrest a person who ordinarily would not be arrested in order to maintain respect for the police or the law enforcement system as a whole").

34. State v. McAteer, 333 S.C. 640-41, 511 S.E.2d 79, 93 (Ct. App. 1998) (Connor, J., dissenting).

citizens' arrest attempts, which could possibly lead to death.[35] And even if violence does not ensue, the alleged wrongdoer may still suffer damages. "Any arrest has a profound and long-lasting effect on the arrestee," for an arrest often leads to lost employment, suspicion, and scrutiny by police, emotional distress, public humiliation, and severed relationships with family and friends.[36] Considering the potential injuries associated with being arrested and the damages flowing from improper arrests, both private citizens and alleged wrongdoers are perhaps better protected if the power to arrest is left to experienced law enforcement officers. Obviously, these officers are better trained in apprehending wrongdoers than are ordinary private citizens.

V. *MCATEER'S* GRAVEST IMPLICATION: OVERLOOKING THE IMPORTANCE OF POLITICAL ACCOUNTABILITY

The most significant disadvantage of *McAteer* is that it overlooks the importance of police officer accountability. *McAteer* confers "boundless" law enforcement authority to police officers displaying official state authority without providing corresponding provisions of law to guarantee accountability. Police officers are most likely accountable to their home jurisdictions, for those jurisdictions hire and compensate the officers.[37] And police officers are simply more visible in their home precincts. Therefore, because "foreign" arenas do not confer the same benefits or responsibilities upon the officers, questions arise when officers act outside their bailiwick. The officers are less "politically accountable" to the foreign jurisdictions than to their home precincts.

Cases arising under 42 U.S.C. § 1983[38] and those discussing the "color

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35. *See, e.g.*, State v. Davis, 50 S.C. 405, 427, 27 S.E. 905, 913 (1897) (involving a private citizen's attempt to arrest a thief that ended with the shooting death of the man who attempted the arrest).

36. Schroeder, *supra* note 9, at 797-800.

37. *Cf.* Thomas M. Mengler, *The Sad Refrain of Tough on Crime: Some Thoughts on Saving the Federal Judiciary from the Federalization of State Crime*, 43 U. KAN. L. REV. 503, 516 (1994) (commenting on the ability of state and local governments to better respond to local and state concerns than the federal government).

38. 42 U.S.C. § 1983 (1994).

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

of office" doctrine, though not exactly on point, are relevant to the issue of political accountability.[39] Criminal procedure cases also shed light on this issue. For example, an Illinois court determined that police officers acting under guise of state authority are not ordinary citizens. In *People v. Seybold*[40] police officers acting outside their jurisdiction made an arrest after a lengthy drug investigation.[41] The court stated that, at the time of the arrest, the police officers were acting as agents of the state, but because the police officers did not reveal their identities as police officers at the commencement of the arrest, the court invalidated it.[42] In *Goodman v. State*[43] a Florida court held that an officer acting pursuant to a request for aid by a sheriff's department in making an extrajurisdictional arrest related to a case that originated in his jurisdiction had the authority to make the arrest.[44] The court did not consider the officer to be a private citizen making a citizen's arrest.[45]

As these cases evince, courts believe that police officers making arrests outside their jurisdictions, flashing some indicia of state authority, are not truly "private" citizens and, therefore, need further accountability. As one

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Id.

39. *See, e.g.*, State v. Phoenix, 428 So. 2d 262, 266 (Fla. Dist. Ct. App. 1982) ("Pursuant to the 'under color of office' doctrine, police officers acting outside their jurisdiction but not in fresh pursuit may not utilize *the power of their office* to gather evidence or ferret out criminal activity not otherwise observable.").

40. 423 N.E.2d 1132 (Ill. App. Ct. 1981).

41. Metropolitan Enforcement Group made the arrest, and this group was "composed of police officers of several municipalities located in Cook County, [Illinois.]" *Id.* at 1133.

42. The court stated:

> Agent Kautz testified the door was closed but unlocked and that they did not announce their identity or purpose before entering the apartment, but did so after getting inside. The occupants of the apartment . . . were handcuffed and it was searched.
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> . . . .
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> . . . It seems apparent in the unusual circumstances . . . that the MEG agents who entered the apartment, arrested defendant, and seized the evidence in issue believed at the time they were acting as police officers and that they were, in fact, conducting the drug investigation on behalf of the State.
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> . . . .
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> For these reasons [and others discussed in the case,] the denial of defendant's motion to suppress evidence will be reversed . . . .

Id. at 1133-35.

43. 399 So. 2d 1120 (Fla. Dist. Ct. App. 1981).

44. *Id.* at 1121.

45. For a discussion of other cases involving extrajurisdictional arrests, see Russell G. Donaldson, Annotation, *Validity, in State Criminal Trial, of Arrest Without Warrant by Identified Peace Officer Outside of Jurisdiction, When Not in Fresh Pursuit*, 34 A.L.R.4th 328 (1984).

commentator, analogizing to federal jurisdiction, stated:

> While a federal officer, in the absence of federal statute, acting under authority of state law, has been held to have only the arrest authority of a private citizen, such technical status under state law does not affect his official position as a government agent for purposes of the constitutional guarantee against unreasonable searches and seizures: He is still an official for that purpose. By analogy, the same would seem to be true in the case of a state officer acting outside the boundaries of his own bailiwick, in which case he also is held to occupy the status of a private citizen.[46]

However, civil lawsuits, such as those based on the issues in the cases mentioned above or on 42 U.S.C. § 1983, are not the most effective accountability check on police officers.[47] Primarily, the threat of such suits generally does not deter police officers from misconduct. "'Many officers lose nothing as a result of being sued. It costs them nothing financially, it never results in discipline, it has no effect on promotion, and it does not affect the way officers are regarded by their peers and superiors.'"[48] Moreover, civil lawsuits arising under 42 U.S.C. § 1983 provide checks on *civil* accountability, not *professional* accountability; a police officer can walk away from a 42 U.S.C. § 1983 suit not legally liable for violating another person's constitutional rights, but still be guilty of unprofessional conduct.[49] Therefore, some jurisdictions recognize the need for explicit guarantees of political accountability when uniformed police officers make extrajurisdictional arrests.

For example in Pennsylvania, the legislature has enacted a statute establishing statewide municipal police jurisdiction.[50] The statute contemplates extrajurisdictional police authority in various circumstances. Essentially, it

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46. EDWARD C. FISHER, SEARCH AND SEIZURE 80 (1970) (footnotes omitted).

47. *See* Alison L. Patton, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 Is Ineffective in Deterring Police Brutality*, 44 HASTINGS L.J. 753, 753-54 (1993).

48. *Id.* at 767-68 (quoting Telephone Interview with Oliver Jones, Attorney in Oakland, Cal. (Jan. 8, 1992)).

49. *See, e.g.*, McAnnis v. State, 386 So. 2d 1230, 1231 (Fla. Dist. Ct. App. 1980) (involving an extrajurisdictional arrest by an officer who, while acting merely as a citizen, identified himself as an officer and drew a gun on the arrestee). Regardless of whether one agrees with the *McAnnis* court that the officer did not implicate the "color of office" doctrine, *id.* at 1232, political accountability seems a necessary check for misusing state authority and acting unprofessionally.

50. 42 PA. CONS. STAT. ANN. § 8953 (West 1999).

authorizes extrajurisdictional arrests in six specific instances: (1) pursuant to a court order; (2) when "the officer is in hot pursuit of any person for any offense which was committed . . . within his primary jurisdiction;" (3) "to aid or assist [another] law enforcement officer;" (4) with the other jurisdiction's prior consent; (5) when the officer is "on official business and views an offense, or has probable cause to believe . . . a felony, misdemeanor, breach of the peace or other act which presents an immediate clear and present danger [has been committed];" and (6) when the officer "views an offense which is a felony, or has probable cause to believe . . . a felony has been committed."[51]

This statute obviously expands police arrest authority. However, the statute's underlying purpose is to balance this extrajurisdictional power with intrajurisdictional checks. The Pennsylvania Supreme Court articulated this purpose in *Commonwealth v. Merchant*.[52] In *Merchant*, the court explained that through the Jurisdiction Act, the General Assembly expanded the powers of local police while "maintaining police accountability to local authority."[53] The court praised the Act's objectives, noting that the Act "fosters local control over the police, and discourages extra-territorial forays by outside law enforcement officers who are not subject to the control of the municipality: certainly a laudable goal."[54] New York has enacted a similar statute, conferring police officers statewide jurisdiction.[55]

Other states have established review boards to investigate police misconduct. For example, since 1885 the Milwaukee Fire and Police Commission has overseen, among other things, allegations of police or fire personnel misconduct.[56] One commentator described civilian review as follows:

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51. *Id.*

52. 595 A.2d 1135 (Pa. 1991).

53. *Id.* at 1139.

54. *Id.* at 1138 n.7; *see also* Benjamin S. Lifsey, Note, *Criminal Law—Municipal Police Jurisdiction: Criminals Cannot Hide Behind Municipal Boundary Lines*—Commonwealth v. Pratti, *608 A.2d 488 (Pa. 1992)*, 66 TEMPLE L. REV. 515, 527 (1993) (interpreting *Pratti* as reiterating that the primary purpose of the statute is to "expand[] local police powers, while maintaining local accountability and control").

55. *See* N.Y. CRIM. PROC. LAW § 140.10(3) (McKinney 1992), *cited in* State v. McAteer, 333 S.C. 641, 511 S.E.2d 79, 93 (Ct. App. 1998) (Connor, J., dissenting). In *McAteer*, Judge Connor implied that the South Carolina General Assembly should consider a statute patterned after New York's, not because the *McAteer* decision grants police officers an escape from political accountability, but because Judge Connor thought that a statute clearly granting police officers statewide arrest authority is the best way to guarantee police officers' authority to make extrajurisdictional arrests without conferring such power on truly private citizens. *See McAteer*, 333 S.C. at 641, 511 S.E.2d at 93 (Connor, J., dissenting). Viewing New York's statute in relation to Pennsylvania's statute, one sees that the New York statute may not only resolve Judge Connor's concern, but may also offer a compromise between extrajurisdictional power and intrajurisdictional control and provide a guarantee of political accountability when officers arrest outside their bailiwicks.

56. *See* Richard S. Jones, *Processing Civilian Complaints: A Study of the Milwaukee Fire and Police Commission*, 77 MARQ. L. REV. 505, 512-19 (1994). The Milwaukee Fire and Police Commission is the oldest fire and police commission in the United States. *Id.* at 512.

> The defining characteristic of civilian review is the review of police misconduct by persons who are not sworn police officers. Citizens who feel they are victims of police misconduct and are not satisfied with the way the police department handled their complaint can bring their case before a civilian review board.[57]

The Milwaukee Commission has established an intricate procedure to deal with citizen complaints. The procedure commences when a citizen files a complaint with either the Commission or the respective police department and can end with a suspension, demotion, or discharge of the offending official.[58] In fact, the Commission's ability to impose punishment is what makes the Milwaukee model so successful as compared with other civilian review boards.[59] However, most complaints never culminate in disciplinary actions, as "[m]any times the complaint is resolved [by] conciliation" between the officer and the complainant.[60] Only when conciliation is not successful is a pretrial conference set and a trial conducted.[61]

Detroit has established a different review board, the Detroit Board of Police Commissioners (BPC), to exercise control over complaints of police misconduct.[62] A unit within the BPC, known as the Professional Standards Section (PSS), deals exclusively with "conducting and reviewing all complaint investigations, maintaining complaint and injury records, and controlling the distribution and use of a . . . standardized complaint form. The PSS [is] also charged with actively seeking out instances of misconduct, mistreatment of citizens, and inadequate or improper police service."[63] In its first year of existence, the PSS proved that its services were much needed, for the PSS "caseload represented *a 200% increase over the cumulative total of 1,733 complaints [of police misconduct] reported during the preceding nine year[s].*"[64]

While neither the Milwaukee Police and Fire Commission nor

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57. *Id.* at 505 (footnote omitted).

58. For a complete discussion of the review board procedure, see *id.* at 514-16.

59. "As expressed by the former Director of [the Commission], 'I think that the biggest strength is that we have teeth in our law.'" *Id.* at 517 (quoting Interview with Michael Morgan, Executive Director, Milwaukee Fire and Police Commission, in Milwaukee, Wis. (July 21, 1992)).

60. *Id.* at 515.

61. *Id.*

62. *See* Edward J. Littlejohn, *The Civilian Police Commission: A Deterrent of Police Misconduct*, 59 U. DET. J. URB. L. 5 *passim* (1981).

63. *Id.* at 39-40 (footnotes omitted). The PSS also is "directed to recommend innovations in the department's organization, policies, and procedures to minimize incidences of injury to citizens resulting from police action or inaction." *Id.* at 40.

64. *Id.* at 42.

Detroit's BPC was established primarily to deal with "professional" accountability, such a concern is not inconsistent with their objectives, as the structures of these boards imply. For example, in Detroit citizens can file complaints asserting general demeanor infractions, implying that general unprofessional behavior is a valid complaint.[65] On the other hand, in Milwaukee one of the Commission's stated goals is to maintain professionalism.[66] Furthermore, although both the Detroit and Milwaukee models deal with the police personnel of only one city, nothing suggests that such models could not deal with police misconduct on a statewide level, erasing any territorial bounds.

VI. CONCLUSION

Currently, South Carolina has neither a civilian review board nor a statutory scheme similar to that of Pennsylvania or New York.[67] In fact, South Carolina has not enacted any statutory provision ensuring political accountability of law enforcement officers conducting extrajurisdictional arrests, although, admittedly, South Carolina law enforcement officers are still held to community and professional standards when they act outside their respective jurisdictions.

With the court's decision in *McAteer*, police officers now have greater latitude in effecting arrests as "private citizens" even though an accused believes the arrest implicates state authority. At the same time, Officer Thompson, having just gotten off duty, was clearly stuck in a dilemma. While still in uniform, he witnessed a crime taking place. He clearly did not have time to change clothes without risking both spoliation of evidence and McAteer's escape. Yet without disrobing his official attire, Thompson risked appearing to act under the auspice of state authority and using his authority in an unprofessional manner.

An acceptable medium is achievable. South Carolina can adopt a mechanism that allows police officers to conduct statewide arrests while preserving professionalism and preventing misleading arrests. South Carolina can achieve this compromise by adopting a statute similar to Pennsylvania's or by creating a civilian review board that has the power to sanction officers for unprofessional conduct. Such a solution would preserve the advantages of *McAteer* while eliminating its drawbacks. Additionally, establishing statewide jurisdiction would preserve the common law, which in turn would preserve the

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65. *See id.* at 43.

66. *See* Jones, *supra* note 56, at 513 (stating that with the passage of the bill establishing the Milwaukee Police and Fire Commission, the Commission "'acquired the authority . . . to review the efficiency and general good conduct of the departments'" (quoting MILWAUKEE FIRE AND POLICE COMM'N COMMEMORATIVE BOOKLET 6 (1985))).

67. *Cf.* S.C. CODE ANN. § 5-7-120 (Law. Co-op. Supp. 1998) (authorizing municipalities to send law enforcement officers to other political subdivisions only in the event of an emergency).

distinction between the arrest authority of police officers and private citizens and would preserve the Fourth Amendment as a touchstone for defining what is and what is not a reasonable search or seizure. Furthermore, such a solution would devote more manpower to the fight against drunk driving by allowing police officers to arrest drunk drivers in all parts of the state. Granting police officers this authority will generate respect for law enforcement in general and confidence among law enforcement officials themselves.

The drawbacks of the *McAteer* result disappear with such a solution, for if statewide arrest authority is given to police officers, arrests such as that in *McAteer* need not be upheld as citizens' arrests. Thus, the threat of "roaming bands of citizens stopping each other for traffic offenses" subsides.[68] In addition, the potential injuries and damages resulting for improper arrests diminish because the authority to deal with alleged wrongdoers is left in the hands of trained officers. Furthermore, adopting one of the above solutions would resolve the problem of maintaining the political accountability associated with intrajurisdictional responsibilities when police officers perform extrajurisdictional arrests.

McAteer will most likely come before the South Carolina Supreme Court providing an opportunity for the court to resolve the positive and negative implications of *McAteer*.

Christine Fernicola

68. State v. McAteer, 333 S.C. 641, 511 S.E.2d 79, 93 (Ct. App. 1998) (Connor, J., dissenting).