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Constitutional Law - Due Process - Municipal Ordinance That Authorizes Assessment of Towing and Storage Fees Against Impounded Vehicle Without Prior Notice or Opportunity for Hearing Denies Vehicle Owner Due Process of Law

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terrent effect when law enforcement officials have acted reasonably and with good faith, although mistakenly.[73] If the officials do their duty, they will continue to act reasonably and in good faith, even if they are again proven to be mistaken.[74] All that the exclusionary rule can do under such circumstances is to impair or abort the truth-finding process.[75]

Justice White therefore seems to believe that the Court should modify a judge-made rule before changing established statutory interpretations.

By its decision in *Stone v. Powell,* the Court has relegated fourth amendment claims to second class status. The Court has denied collateral relief for search and seizure claims, without denying it for other constitutional claims, although this too may eventually happen if Justice Brennan's prognostication is correct. The only avenue now available for relief when fourth amendment rights have been violated in state courts is certiorari, the grant of which is an uncertain prospect.

The heart of the problem seems to lie with the exclusionary rule, and not with the habeas corpus provisions. The exclusionary rule could be modified, in the manner suggested by Justice White, to avoid unjust results.[76] Defendants who are obviously guilty should not be allowed to go free, to the detriment of innocent victims and society, due to some judicially created technicality or to mistakes made in good faith by conscientious law enforcement officials. However, the writ of habeas corpus should not be denied to those criminal defendants who do have legitimate grievances under the fourth amendment, particularly when the "full and fair opportunity" afforded them in the state courts to litigate their fourth amendment claims may be less than meaningful.

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CONSTITUTIONAL LAW—DUE PROCESS—MUNICIPAL ORDINANCE THAT AUTHORIZES ASSESSMENT OF TOWING AND STORAGE FEES AGAINST IMPOUNDED VEHICLE WITHOUT PRIOR NOTICE OR OPPORTUNITY FOR HEARING DENIES VEHICLE OWNER DUE PROCESS OF LAW.

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73. *Id.* at 3072-73.
74. *Id.* at 3073.
75. *Id.*
76. *Id.* at 3072. For proposed modifications of the exclusionary rule, *see* Kaplan, *The Limits of the Exclusionary Rule,* 26 STAN. L. REV. 1027, 1041-55 (1974). For arguments against modifying the reach of the exclusionary rule, *see* Note, *The Impending Limitation of the Scope of the Exclusionary Rule—Will the Supreme Court Vandalize the Constitution?* 5 N.C. CENT. L.J. 91 (1973); Comment, *Judicial Integrity and Judicial Review: An Argument for Expanding the Scope of the Exclusionary Rule,* 20 U.C.L.A. L. REV. 1129 (1973).

Plaintiff discovered his automobile missing from the place where he had parked it. After he contacted the New Orleans Police Department Auto Pound, he learned that his automobile had been ticketed, towed, and impounded.[1] Plaintiff went to the auto pound, demanded return of his automobile, and was denied return of the automobile unless he first paid the towing fee and accrued storage charges. Approximately a week later,[2] plaintiff filed an individual and class action in federal district court[3] against the defendants,[4] seeking injunctive and declaratory relief and damages.[5] Plaintiff's automobile was returned to him the same day the action was commenced, without payment of the charges demanded by the auto pound, pursuant to an agreement with counsel for defendants. Plaintiff claimed that the initial towing and impoundment of vehicles without prior notice or opportunity for a hearing, and the assessment of towing fees and storage charges without prior notice or opportunity for a hearing, as provided by the ordinance, violated the due process guarantees of the fourteenth amendment to the United States Constitution.[6] The United States District Court for the Eastern District of Louisiana *held* that the initial towing and impoundment of vehicles did not require prior notice or opportunity for a hearing, but that assessment of towing fees and storage charges without prior notice

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1. Remm v. Landrieu, 418 F. Supp. 542 (E.D. La. 1976). Plaintiff's automobile was towed and impounded pursuant to NEW ORLEANS, LA., CODE § 38-274 (19——), which reads in pertinent part:

> Any unoccupied vehicle of any kind or description whatever found violating any traffic law shall be removed immediately and impounded by any police officer or duly authorized person and shall only be surrendered to a duly identified owner thereof upon the payment of fifteen dollars ($15.00) hereby declared to be the towing fee covering such impounding. Such owner shall thereafter have the responsibility of separately disposing of the violation charge against him at the Violations Bureau or the court having jurisdiction over such violations.
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> . . . .
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> In addition to the fee for towing said vehicle, there shall be an additional fee of three dollars ($3.00) for storage of vehicle for each twenty-four (24) hours or part thereof over and above twenty-four (24) hours from the time vehicle is towed to the Department Pound. Total storage fee not to exceed seventy-five dollars ($75.00).

2. Plaintiff discovered his car missing on December 30, 1975 and filed suit on January 5, 1976. 418 F. Supp. 542, 543 (E.D. La. 1976).

3. Plaintiff based his action on 42 U.S.C. § 1983 (1970), which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, 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.

4. The defendants named in the complaint were the mayor and councilmen of the City of New Orleans; and the superintendent of police and the commanding officer of the auto pound, New Orleans Police Department; all named individually and in their official capacities. Remm v. Landrieu, 418 F. Supp. 542 (E.D. La. 1976) (BNA, U.S.L.W. slip opinion).

5. Counsel for all parties agreed to submit the issue of the validity of the city ordinance to the court on memoranda, reserving the damage question for a later trial. *Id.* at 543.

6. *Id.* at 544.

or opportunity for a hearing was unconstitutional.[7] *Remm v. Landrieu*, 418 F. Supp. 542 (E.D. La. 1976).

Although the court in *Remm* cited no precedent squarely on point for its decision,[8] various theories have been used to attack the validity of similar ordinances in other courts. In *Steiner v. City of New Orleans*,[9] the Louisiana Supreme Court held the assessment of towing fees and storage charges before return of an impounded vehicle to be constitutional under the Louisiana Constitution.[10] The Louisiana Supreme Court reversed the trial court's holding that the ordinance was unconstitutional, and also reversed the trial court's award of $3.00 damages to plaintiff and stated:

> The plaintiff has offered no testimony whatever as to the reasonableness or unreasonableness of the ordinance or of the fee fixed by the ordinance for impounding vehicles parked in violation thereof, and, as the passage of the ordinance was a matter within the legislative power of the commission council, we think the ordinance is reasonable and constitutional.[11]

In a replevin action to recover an impounded automobile, an Ohio court of appeals held in *Jackson v. Copelan*[12] that the ordinance "expresses a reasonable exercise of police power vested in the city by the charter and laws of the state of Ohio, and that, in the absence of evidence to the contrary, the fee is reasonable."[13]

Various suits have also been brought to recover the amount paid for return of vehicles impounded for parking violations. The alleged grounds for recovery have varied greatly in these actions. One case[14] relied on grounds similar to those raised in *Steiner v. City of New Orleans*,[15] while another claimed that a city ordinance did not comply with a similar state statute.[16] A third case alleged denial of due

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7. *Id.* at 548.
8. *Id.* at 546.
9. 173 La. 275, 136 So. 596 (1931).
10. *Id.* at ——, 136 So. at 597. LA. CONST. art. I, § 2 states:
    No person shall be deprived of life, liberty, or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid.
11. 173 La. 275, ——, 136 So. 596, 597 (1931).
12. 50 Ohio App. 414, 198 N.E. 596 (1935). Plaintiff's automobile was released immediately upon payment of a replevin bond. *Id.* at ——, 198 N.E. at 597. *See also* Hughes v. City of Phoenix, 64 Ariz. 331, 170 P.2d 297 (1946); Park v. Adams, 289 S.W.2d 829 (Tex. Civ. App. 1956).
13. 50 Ohio App. 414, ——, 198 N.E. 596, 599 (1935). The court held the ordinance was not in conflict with the due process clause of the Constitution. *Id.* at ——, 198 N.E. at 599.
14. M.L. Weiss, Inc. v. Whalen, 135 Misc. 290, 238 N.Y.S. 95 (1929). The court held the amount required was not in the nature of a fine or penalty, but was intended to reimburse the street cleaning department, and that an innocent owner could still avail himself to a judicial hearing and obtain appropriate redress. *Id.* at ——, 238 N.Y.S. at 98-99.
15. 173 La. 275, 136 So. 596 (1931).
16. Hambley v. Town of St. Johnsbury, 130 Vt. 204, ——, 290 A.2d 18, 19 (1972). Plaintiff also sought to enjoin enforcement of the ordinance, but did not attack its constitutional validity. *Id.* at ——, 290 A.2d at 19.

process because a sign was not posted warning of impoundment.[17] A fourth claimed a city ordinance authorizing impoundment was unconstitutional because it provided for impoundment whether the vehicle was occupied or not.[18]

Injunctions have also been sought restraining a city from enforcing the ordinance against an individual plaintiff.[19] Often the claim in these suits was that the cities were selective in their enforcement and had thus denied the plaintiff equal protection of the laws.[20]

In *Boss v. City of Spokane*,[21] plaintiff sued the city and two of its police officers on a theory of conversion.[22] Plaintiff alleged that the impounding of his vehicle was not authorized by the city ordinance, which provided for removal when a vehicle "constitutes an obstruction to traffic, blocks the use of a fire hydrant, or provides a danger to travel."[23] Plaintiff claimed that mere overtime parking was not an "obstruction" as required by the ordinance.[24] The Supreme Court of Washington affirmed the lower court's judgment against the police officers as individuals, but reversed the judgment against the city because the claim against the city was not filed within the statutorily required thirty day time limit.[25]

It is interesting to note that all of the cases previously discussed have involved state courts. In all of these cases the courts have declared the assessment of towing fees, without prior notice or an opportunity for a hearing, to be constitutional. Automobile impoundment ordinances have also been considered in four recent United States District Court cases.

In *Seals v. Nicholl*,[26] plaintiff claimed that the failure to provide any procedural opportunity to challenge the validity of the seizure of the automobile violated his rights under the fifth and fourteenth

17. Cohen v. City of New York, 69 Misc. 2d 189, ——, 329 N.Y.S.2d 596, 598 (1972). Plaintiff claimed that because there were signs posted in other areas, but not where he parked, he was denied due process. *Id.* at ——, 329 N.Y.S.2d at 598. The court held that it was not their function to determine due process. *Id.* at ——, 329 N.Y.S.2d at 599-600.

18. Edwards v. City of Hartford, 145 Conn. 141, ——, 139 A.2d 599, 600 (1958). The court determined that the plaintiff was not present when the impounding procedure began. *Id.* at ——, 139 A.2d at 600-01. The court did not, however, address the question of constitutionality of the ordinance. *Id.* at ——, 139 A.2d at 601.

19. *E.g.*, McLaurine v. City of Birmingham, 247 Ala. 414, 24 So. 2d 755 (1946); Park v. Adams, 289 S.W.2d 829 (Tex. Civ. App. 1956); Miller v. Allen, 257 S.W.2d 127 (Tex. Civ. App. 1953); Hambley v. Town of St. Johnsbury, 130 Vt. 204, 290 A.2d 18 (1972).

20. *E.g.*, McLaurine v. City of Birmingham, 247 Ala. 414, ——, 24 So. 2d 755, 758 (1946); Miller v. Allen, 257 S.W.2d 127, 128 (Tex. Civ. App. 1953); In *McLaurine*, plaintiff also claimed the ordinance denied due process on its face. 247 Ala. 414, ——, 24 So. 2d 755, 756 (1946). In both cases, plaintiffs' had long histories of parking violations. Neither case, however, addressed the assessing of a fee before return of an impounded car.

21. 63 Wash. 2d 305, 387 P.2d 67 (1963).

22. *Id.* at ——, 387 P.2d at 68.

23. SPOKANE, WASH., CITY ORDINANCE No. C 12833 § 46.48.300 (——).

24. 63 Wash. 2d 305, ——, 387 P.2d 67, 68 (1963).

25. *Id.* at ——, 387 P.2d at 69-70.

26. 378 F. Supp. 172 (N.D. Ill. 1973). Plaintiff's automobile was seized as "prisoner's property." Although the seizure did not comply with police regulations, the automobile was destroyed, and plaintiff brought the action under 42 U.S.C. § 1983 (1970), claiming he was not properly notified of the seizure and that he was not given an opportunity to challenge it. 378 F. Supp. 172, 173-75 (N.D. Ill. 1973).

amendments to the Constitution.[27] The court held the failure to be a violation of due process, because the plaintiff "would not, under present procedures, have been able to assert that the arresting officers had ordered his car towed improperly, and that therefore he should not be penalized by having to pay the towing and storage fees."[28]

The court held in *Graff v. Nicholl*,[29] that a state statute[30] and a city ordinance[31] that authorized law enforcement agencies to dispose of "abandoned" motor vehicles which displayed current license plates and/or city registration decals, was unconstitutional because it did not provide for prior notice or an opportunity to be heard before the seizure.[32] The court also held that the requirements in the statute and ordinance that towing and storage charges be paid as a precondition to the release of an abandoned vehicle, regardless of whether the owner had been charged with or acquitted of the misdemeanor of abandonment,[33] was unconstitutional.[34]

In *Stephens v. Tielsch*[35] plaintiff challenged a Seattle ordinance that authorized the towing of illegally parked vehicles by private towing companies.[36] The court held that the assessment of towing and storage fees, and the detention of impounded vehicles for purposes of securing the payment of such fees without notice and an opportunity for a prior hearing, by either the city or a private towing company, was barred by the due process clause of the fourteenth amendment.[37]

Another federal case that involved vehicles which had been towed and impounded by private towing companies is *Stypmann v. Nelder*.[38] In *Stypmann*, the court held that the imposition of a garagekeeper's lien to insure payment of towing and storage fees, without prior notice or an opportunity for a hearing, was unconstitutional.[39]

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27. *Id.* at 177.

28. *Id.* The ordinance provided for $20.00 for towing and $2.00 per day for storage, and that the owner would lose all property rights in his vehicle if he did not claim it within fifteen days. *Id.*

29. 370 F. Supp. 974 (N.D. Ill. 1974).

30. ILL. ANN. STAT. ch. 95½, §§ 4-201 to 214 (Smith-Hurd Supp. 1976).

31. CHICAGO, ILL., MUN. CODE §§ 27-200, 372, 372.1, 425 (——).

32. 370 F. Supp. 974, 987 (N.D. Ill. 1974).

33. ILL. ANN. STAT. ch. 95½, § 4-201 (Smith-Hurd Supp. 1976).

34. 370 F. Supp. 974, 985 (N.D. Ill. 1974). When abandoned motor vehicles obstruct the traffic flow, they are classified as a "hazard," and are subject to immediate tow. *Id.* at 982. The court stated: "In situations where a vehicle in the requisite state of disrepair is towed immediately, the hearing should be held before the owner is required to pay any charges." *Id.* at 985.

35. Civil No. 73-73C2 (W.D. Wash. 1974) (unpublished opinion) *cited in* Remm v. Landrieu, 418 F. Supp. 542, 547 (E.D. La. 1976).

36. *Id.* at ——, *cited in* Remm v. Landrieu, 418 F. Supp. 542, 547 (E.D. La. 1976).

37. *Id.* at ——, *cited in* Remm v. Landrieu, 418 F. Supp. 542, 547 (E.D. La. 1976).

38. Civil No. C-70-2312 AJZ (N.D. Cal. 1974) (unpublished opinion) *cited* in Remm v. Landrieu, 418 F. Supp. 542, 547 (E.D. La. 1976). This case is now *sub judice* in the Ninth Circuit Court of Appeals. 418 F. Supp. at 547 n.10.

39. Civil No. C-70-2312 AJZ at —— (N.D. Cal. 1974) (unpublished opinion) *cited in* Remm v. Landrieu, 418 F. Supp. 542, 548 (E.D. La. 1976). The court held that San Francisco's practice of providing for a hearing, within 5 days of the citation which resulted in the tow, with the city absorbing the cost of tows found improper, fell short of the prior notice or opportunity for a hearing that the Constitution requires. *Id.*

The disparity between the holdings of state courts and federal district courts on the issue of due process requirements for assessment of towing fees can probably be best explained by examining the dates of the decisions. All of the state court decisions were decided prior to early 1972 while the federal cases were decided in 1973 and 1974. On June 12, 1972, the United States Supreme Court decided *Fuentes v. Shevin*.[40] This case has had a tremendous impact on due process requirements with respect to deprivation of property. *Fuentes* held that there may be extraordinary situations which allow summary seizure of property without prior notice or opportunity for a hearing as required by the Constitution.[41] However, the Court in *Fuentes* did set forth three requirements which must be met before a person's property could be seized without providing that person notice and an opportunity for a hearing in advance of the seizure:

> First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.[42]

The court in *Remm v. Landrieu*[43] relied heavily on the guidelines set by *Fuentes* in reaching its decision. First, the court examined the validity of towing and impounding of illegally parked vehicles

40. 407 U.S. 67 (1972). In *Fuentes* plaintiffs challenged the constitutional validity of the Florida and Pennsylvania replevin statutes. The replevin statutes authorized a creditor to obtain a writ of replevin by filing a complaint alleging that he was entitled to the property and by posting a bond in an amount equal to at least double the value of the property to be replevied. The writ of replevin ordered the state official to whom it was directed to seize the property and to summon the defendants. The official was required to hold the seized property for a three-day period and during this period the debtor could reclaim it by posting his own bond. If the debtor did not do so, the property was transferred to the creditor, pending a hearing on the merits of the creditor's claim. The court held the statutes unconstitutional because they allowed state officials, on application of a private party, to seize the property of a debtor without affording the debtor prior notice or a prior opportunity to be heard. *Id.* at 96.

41. The Court listed three cases which allowed attachment without prior hearing: (1) Coffin Bros. & Co. v. Bennett, 277 U.S. 29 (1928), allowed attachment to protect the public from a bank failure; (2) Owenby v. Morgan, 256 U.S. 94 (1921), permitted attachment of certain shares of stock of a debtor to obtain jurisdiction over him; and (3) McKay v. McInnes, 279 U.S. 820 (1929), was affirmed on the authority of *Coffin Bros.* and *Owenby*. 407 U.S. 67, 91 (1972). In *Fuentes* the Supreme Court stated that it has also allowed summary seizures of property in certain other situations: Phillips v. Commissioner, 283 U.S. 589 (1931), allowed seizure to collect the internal revenue; Central Union Trust Co. v. Garvan, 254 U.S. 554 (1921), allowed a seizure during time of war; Fahey v. Mallonee, 332 U.S. 245 (1947), allowed seizure to prevent a bank failure; Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950), allowed a seizure of misbranded drugs; and North American Storage Co. v. Chicago, 211 U.S. 306 (1908), allowed a seizure of contaminated food. 407 U.S. 67, 91 (1972).

42. 407 U.S. 67, 91 (1972).

43. 418 F. Supp. 542 (E.D. La. 1976).

without prior notice or opportunity for a hearing.[44] Although this would be only a temporary deprivation, *Sniadach v. Family Finance Corp.*[45] held that any taking of property for even a short period of time without due process is repugnant to the Constitution.[46] In *Remm*, the court held that the impounding of illegally parked vehicles satisfied the first *Fuentes* requirement because such impounding was necessary to protect the recognized interest of local governments in regulating the use of their streets and other public places.[47] The second *Fuentes'* requirement of a need for prompt action was satisfied because public safety and convenience normally require the prompt removal of illegally parked vehicles.[48] Finally, that a police officer must make some determination that a city traffic ordinance is being violated before a vehicle may be towed was held to satisfy the third requirement of *Fuentes*, which is strict control by a government official.[49]

The Court in *Remm* applied the same *Fuentes* requirements to assessment of towing and storage fees before return of an impounded vehicle without prior notice or an opportunity to be heard.[50] The court concluded that an extraordinary situation which demanded prompt action no longer existed after the car had been removed from the street.[51] Therefore, the rights of notice and an opportunity to be heard in advance of the deprivation, or in advance of the continuance of the deprivation, had to be afforded.[52]

The seizure was held no longer necessary to secure an important governmental or public interest as the city had already exercised its police power to regulate the use of its streets.[53] The existence of alternative means to secure payment of the towing and storage fees indicated that the practice of retaining the vehicle was not a necessity.[54] The court found there was no longer a need for prompt action, since the vehicle had been removed from the streets, and public safety was no longer in jeopardy.[55] Finally, on the assess-

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44. *Id.* at 545.
45. Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).
46. *Id.* at 339, 342.
47. 418 F. Supp. 542, 545 (E.D. La. 1976). In support of this proposition the court in *Remm* cited Walker v. City of Birmingham, 388 U.S. 307 (1967); and Cox v. New Hampshire, 312 U.S. 569 (1941).
48. 418 F. Supp. 542, 545 (E.D. La. 1976). It should be noted, however, that this requirement may not be satisfied in the removal of *all* illegally parked vehicles. Graff v. Nicholl, 370 F. Supp. 974 (N.D. Ill. 1974), discussed in text accompanying notes 29-34 *supra*, held that due process requires that notice and an opportunity for a hearing be accorded to owners of abandoned vehicles not obstructing traffic, prior to towing and impounding them. *Id.* at 983.
49. 418 F. Supp. 542, 545 (E.D. La. 1976).
50. *Id.* at 546.
51. *Id.*
52. *Id.*
53. *Id.* at 545-46.
54. The court provided the alternative of posting a bond to insure appearance, as was done when other violations were contested. *Id.* at 546.
55. *Id.*

ment stage of the ordinance, the court stated that there was no longer careful supervision by a public official, because fees were collected from every vehicle owner without discretion, once the vehicle entered the auto pound.[56]

North Dakota law provides for removal of vehicles which constitute an obstruction to traffic, but apparently does not specifically provide for the assessment of any towing fees or storage charges.[57]

The ordinance declared unconstitutional in *Remm* is similar to the ordinances of several North Dakota cities, for example, Bismarck,[58] Dickinson,[59] Fargo,[60] Grand Forks,[61] Jamestown,[62] Minot,[63] Valley City,[64] Williston,[65] and the North Dakota League of Cities Codified City Ordinances.[66] The only ordinances that provide for notice that a car has been impounded are those of Bismarck,[67] Jamestown,[68] and Minot.[69] None of these ordinances provide for an opportunity to be heard, and all of them require the impounded vehicle to be held until all expenses of towing and storage are paid.[70] In addition, the ordinances of Bismarck,[71] Fargo,[72] Grand Forks,[73] Minot,[74] and Williston[75] require that any fines or penalties imposed for violation of the offenses which prompted the impoundment also be paid before the vehicle is returned. The Bismarck,[76] Dickinson,[77] and Minot[78] ordinances also make it unlawful for any person to remove

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56. *Id.*

57. N.D. CENT. CODE § 39-10-48(2) (Supp. 1975), provides:

> Whenever any police officer finds a vehicle unattended upon any highway, bridge, or causeway, or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby auhtorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

N.D. LEAGUE OF CITIES, MODEL MUN. ORDINANCES § 14-2 (July 1975), is identical to this statute.

58. BISMARCK, N.D., CITY CODE §§ 35-26 to 27 (1973).

59. DICKINSON, N.D., CITY CODE §§ 20-68 to 69 (Supp. 1963).

60. FARGO, N.D., REV. ORDINANCES §§ 8-0126, 11-0401 to 0402 (1965).

61. GRAND FORKS, N.D., CITY CODE § 8-1031 (1974).

62. JAMESTOWN, N.D., CITY CODE §§ 21-09-19 to 20 (1960).

63. MINOT, N.D., CITY CODE §§ 5-1515, 17-0801 to 802 (1963).

64. VALLEY CITY, N.D., REV. ORDINANCES § 14-77 (1963).

65. WILLISTON, N.D., CITY CODE §§ 14.52 to .53 (Supp. 1966).

66. N.D. LEAGUE OF CITIES, CODIFIED CITY ORDINANCES OF N.D. §§ 12.0504 to .0505 (19——).

67. BISMARCK, N.D., CITY CODE § 35-26 (1973).

68. JAMESTOWN, N.D., CITY CODE § 21-09-19 (1960).

69. MINOT, N.D., CITY CODE § 5-1515 (1963).

70. Of those ordinances providing for specific charges for towing and storage, Dickinson assesses $5.00 for the towing and $.50 a day for storage charges, DICKINSON, N.D., CITY CODE § 20-68 (Supp. 1963); Grand Forks assesses storage charges of $5.00 a day for the first seven days, and $3.00 a day thereafter, and does not provide an amount for towing charges, GRAND FORKS, N.D., CITY CODE § 8-1031 (1974); and Minot assesses $5.00 plus towing charges and $1.50 per day after the first day as storage charges. MINOT, N.D., CITY CODE § 5-1515 (1963). None of the other ordinances provide for specific charges for towing and storage.

71. BISMARCK, N.D., CITY CODE § 35-26 (1973).

72. FARGO, N.D., REV. ORDINANCES §§ 8-0126, 11-0402 (1965).

73. GRAND FORKS, N.D., CITY CODE § 8-1031 (1974).

74. MINOT, N.D., CITY CODE § 5-1515 (1963).

75. WILLISTON, N.D., CITY CODE § 14.53 (Supp. 1966).

76. BISMARCK, N.D., CITY CODE § 35-27 (1973).

77. DICKINSON, N.D., CITY CODE § 20-68 (Supp. 1976).

78. MINOT, N.D., CITY CODE § 5-1515 (1963).

or attempt to remove an impounded vehicle without first paying the costs of impoundment.

If a case similar to *Remm* arises in North Dakota, it appears that the ordinances mentioned above[79] may be declared at least partially invalid under the requirements of *Fuentes v. Shevin*.[80] Although *Remm* has questionable value as precedent in North Dakota, its application of the *Fuentes* decision to the issue of prior notice and opportunity for a hearing before assessment of towing and storage fees before return of an impounded vehicle is sound, and it is likely that other courts will arrive at the same conclusion in scrutinizing similar ordinances. Although the impact of requiring due process in this area is not a matter of life and death, it is significant to a vehicle owner who may believe his vehicle was impounded improperly.

TIMOTHY D. LERVICK

PHYSICIANS AND SURGEONS—NEGLIGENCE—PSYCHOTHERAPIST HAS A DUTY TO WARN AN ENDANGERED VICTIM WHOSE PERIL WAS DISCLOSED TO PSYCHOTHERAPIST BY PATIENT

Plaintiffs, parents of a young woman murdered by a former mental patient brought a wrongful death action against the regents of the University of California, four university psychotherapists,[1] and five policemen employed by the university. Prior to the woman's murder, the patient, while in psychotherapy, had confided his intention to kill a person readily identifiable as plaintiffs' daughter, but neither plaintiffs nor their daughter were warned of the patient's threats. Shortly after learning of the patient's intention the psychotherapist, assisted by the police, unsuccessfully tried to commit the patient.[2] Subse-

79. See ordinances cited in notes 58-66 *supra*.

80. 407 U.S. 67 (1972). *Fuentes* has already had an impact on North Dakota law. In Guzman v. Western State Bank, 516 F.2d 125 (8th Cir. 1975), the court held that North Dakota's prejudgment attachment procedure, N.D. CENT. CODE § 32-08-01 (1976), was unconstitutional because its provision for summary seizure did not meet the procedural safeguards standards established by *Fuentes* and Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974).

1. The psychotherapist defendants included Dr. Lawrence, the psychologist who examined the patient and determined that he should be committed; and Dr. Harvey Powelson, chief of the department of psychiatry at the university, who rescinded Moore's decision and directed that the staff at the hospital take no action to commit the patient. Tarasoff v. Regents of Univ. of Cal., 17 Cal. 3d 425, 430n.2, 551 P.2d 334, 340n.2, 131 Cal. Rptr. 14, 20n.2 (1976).

In this comment, the term psychotherapist will include psychiatrists and clinical psychologists.

2. After Dr. Moore had determined that the patient should be committed, he wrote to the campus police, requesting that they briefly detain the patient. The police talked to the patient and upon his assurance that he would stay away from the young woman, they released him. Dr. Powelson then ordered the hospital staff to take no further action to commit the patient. *Id.* at 432, 551 P.2d at 341, 131 Cal. Rptr. at 21.