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# Louisiana's Stop and Frisk Law - A Constitutional Question

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# COMMENTS

## LOUISIANA'S STOP AND FRISK LAW— A CONSTITUTIONAL QUESTION

The Louisiana legislature has recently enacted a statute permitting law enforcement officers to "stop and frisk" suspicious persons.[1] Undoubtedly this unprecedented investigatory authority will enhance the ability of local law enforcement officials to prevent crime and detect violators of the law. However, our statute has not yet been interpreted nor its exact scope determined by the Louisiana Supreme Court, and the constitutional validity of a stop for questioning and subsequent frisk is still uncertain.[2] This Comment analyzes the elements and constitutionality of the new statute.

Statutory grants of authority to "stop and frisk" are strikingly similar. The most widely followed are the Uniform Arrest Act[3] and the New York Stop and Frisk Law.[4] Both permit officers to stop for questioning persons whose behavior gives rise to reasonable suspicion of criminal activity[5] and to "frisk" those individuals they reasonably believe dangerous.[6] The major difference is that the Uniform Act provides for a two-hour detention[7] while the New York law is silent as to length of detention.[8]

1. LA. CODE CRIM. P. art. 215.1 (Supp. 1968). Exactly what constitutes a "stop" or "frisk" is not certain. A "stop" is generally considered a detention, usually quite brief, for the purpose of investigation. The "frisk" is viewed as a cursory pat down of the outer clothing of a suspect for weapons. *See* Terry v. Ohio, 88 S. Ct. 1868 (1968); People v. Rivera, 14 N.Y.2d 441, 201 N.E.2d 32, 252 N.Y.S.2d 458 (1964), *cert. denied*, 379 U.S. 978 (1965).

2. Sibron v. New York, 88 S. Ct. 1889, n.20 (1968); Terry v. Ohio, 88 S. Ct. 1868, n.16 (1968).

3. The text of the Uniform Arrest Act appears in Warner, *The Uniform Arrest Act*, 28 VA. L. REV. 315, 343-47 (1942). These provisions were adopted with slight modification: DEL. CODE ANN. tit. 11, §§ 1902, 1903 (1953); N.H. REV. STAT. ANN. § 594:1-23 (1955); R.I. GEN. LAWS ANN. § 12-7-1 (1953); MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 2.02 (Tent. Draft No. 1, 1966). Provisions are related on stopping and questioning: MASS. ANN. LAWS ch. 41, § 98 (1961).

4. N.Y. CODE CRIM. PROC. LAW § 180-a (McKinney Supp. 1968). Almost idential provisions: LA. CODE CRIM. P. 215.1 (Supp. 1968); NEB. LAWS ch. 132, at 471 (1965).

5. Warner, *The Uniform Arrest Act*, 28 VA. L. REV. 315, 320-21 (1942); N.Y. CODE CRIM. PROC. LAW § 180-a (McKinney Supp. 1968).

6. Warner, *The Uniform Arrest Act*, 28 VA. L. REV. 315, 325 (1942); N.Y. CODE CRIM. PROC. LAW § 180-a (McKinney Supp. 1968).

7. Warner, *The Uniform Arrest Act*, 28 VA. L. REV. 315, 320, 344 1942). *See also* ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURES §§ 2.01, 2.02 (Tent. Draft No. 1, 1966).

8. New York courts, in the absence of a fixed period, have interpreted the statute to permit a reasonable period of detention. *See* United States v. Thomas, 250 F. Supp. 771 (S.D.N.Y. 1966).

Similarly, the Louisiana statute, patterned after the New York law, sanctions an investigatory "stop" and questioning upon reasonable suspicion, authorizes a self-protective "frisk," and provides for the admissibility of seized weapons or other objects the possession of which may constitute a crime.[9]

### *The Stop*

The fourth amendment is the principal obstacle which stop and frisk legislation must overcome. The initial problem in determining the constitutionality of detention for questioning is the relationship between the statutory standard of reasonable suspicion and the constitutional standard of probable cause.

#### *Stop v. Arrest*

The fourth amendment requires that probable cause exist before arrest.[10] If the "stop" is considered an arrest within the meaning of the fourth amendment, any stop without "probable cause" will be unreasonable.[11] However, two arguments suggest that probable cause is inapplicable to investigatory stops.[12] First, it is possible to argue that because the automatic consequences of an arrest are not present when a person is merely stopped, a temporary detention is not a "seizure" in the constitutional sense.[13] Although the United States Supreme Court has not

9. Compare the provisions of LA. CODE CRIM. P. 215.1 (Supp. 1968): "Temporary questioning of persons in public places; searches for weapons.

"A. A law enforcement officer may stop any person in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or misdemeanor and may demand of him his name, address and an explanation of his actions.

"B. When a law enforcement officer has stopped a person for questioning pursuant to this Article, and reasonably suspects that he is in danger of life or limb, he may search the outer clothing of such a person for a dangerous weapon or for any other thing the possession of which may constitute a crime.

"C. If the law enforcement officer finds a dangerous weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning at which time he shall either return, it, if lawfully possessed, or arrest such person."

10. *See* Wong Sun v. United States, 371 U.S. 471 (1963); Henry v. United States 361 U.S. 98 (1959); *cf.* Carroll v. United States, 237 U.S. 132 (1925).

11. "Arrest" has most commonly been used in a technical sense to mean a seizure of a person to answer for a crime. *E.g.*, Commonwealth v. Lehan, 347 Mass. 197, 196 N.E.2d 840 (1964): *See* Leagre, *The Fourth Amendment and the Law of Arrest*, 54 J. CRIM. L.C. & P.S. 393 (1963); Comment, 39 N.Y.U.L. REV. 1093 (1964). The United States Supreme Court seems to follow this meaning. *See* note 28 *infra*. *But see* United States v. Festa, 192 F. Supp. 160 (D. Mass. 1960); State v. Harris, 265 Minn. 260, 121 N.W.2d 327 (1963); State v. Sullivan, 65 Wash. 2d 47, 395 P.2d 745 (1964), where it was held that an arrest was completed when the officer merely stopped the suspect.

12. Comment, 65 COLUM. L. REV. 848, 858 (1965). *See also* Comment, 41 S. CAL. L. REV. 161, 168 (1968).

13. *See* United States v. Vita, 294 F.2d 524 (2d Cir. 1961); United States

dealt with the propriety of a "stop," it appears that it has rejected such an argument. The Court reasoned that "whenever a police officer accosts an individual and restrains his freedom to walk away"[14] the fourth amendment's standard of reasonableness applies whether or not the person so seized is formally arrested.[15]

Second, it could be argued that a temporary detention is a lesser "seizure" than, and distinguishable from, an arrest; therefore, a less stringent standard than probable cause should be required.[16] This contention seems more persuasive. Traditionally, an arrest has been defined as the "taking of a person into custody in order that he may be forthcoming to answer for the commission of a crime."[17] The person is booked, fingerprinted, indicted, and often incarcerated. The arrest also gives rise to an extensive search of the individual arrested. For such a serious intrusion of individual liberty, it is undeniably sound to require antecedent "probable cause."[18] Strictly applying these standards, opponents of the investigatory "stop" urge that *any* seizure of a person by a police officer is an arrest and therefore unlawful unless based upon probable cause.[19] On the other hand, advocates urge that a brief detention is not as serious a restriction as an arrest, because the individual is neither subjected to the procedural machinery of a formal arrest nor to public record of suspicion. Thus, within the context of the fourth amendment a qualitative distinction between an arrest and an investigatory detention permitted on grounds less stringent than probable cause is reasonable.[20]

Most lower federal and state courts, [21] faced with determining

v. Bufalino, 285 F.2d 408 (2d Cir. 1960); United States v. Bonanno, 180 F. Supp. 71 (S.D.N.Y. 1960).

14. Terry v. Ohio, 88 S. Ct. 1868, 1877 (1968).

15. *Id.* at 1879.

16. *See* note 21 *infra.*

17. ALI CODE OF CRIMINAL PROCEDURE § 18 (1931). *See* note 11 *supra.*

18. United States v. Rundle, 274 F. Supp. 364, 369 (E.D. Pa. 1967).

19. *See* Foote, *The Fourth Amendment: Obstacle or Necessity in the Law of Arrest?*, 51 J. CRIM. L.C. & P.S. 402 (1960); Souris, *Stop and Frisk or Arrest and Search—The Use and Misuse of Euphemisms*, 57 J. CRIM. L.C. & P.S. 251 (1966). *See* DeSalvatore v. State, 52 Del. 550, 163 A.2d 244 (1960), wherein the Delaware Supreme Court interpreted its statute to require probable cause for a detention.

20. Leagre, *The Fourth Amendment and the Law of Arrest*, 54 J. CRIM. L.C. & P.S. 393 (1963); Ronayne, *The Right To Investigate and New York's "Stop and Frisk" Law*, 33 FORDHAM L. REV. 211 (1964); Seigel, *The New York "Frisk" and "Knock-Not" Statutes: Are They Constitutional?*, 30 BROOKLYN L. REV. 274 (1964). See also Comment, 59 NW. U. L. REV. 641 (1965); Note, 37 MICH. L. REV. 311 (1938).

21. *See, e.g.*, Arnold v. United States, 382 F.2d 4 (9th Cir. 1967); Dupree v. United States, 380 F.2d 233 (8th Cir. 1967); United States v. Rundle, 274

the constitutionality of a "stop," agree that the above distinction can be validly drawn and have refused to hold an on-the-street detention without probable cause ipso facto unreasonable. Agreeing that a detention is a lesser invasion of personal liberty than an arrest and that the consequences of a detention are less serious than those of an arrest, these courts have found a detention not to be an arrest thus requiring a less stringent standard of reasonableness. Other courts have reached the same result by holding that an arrest does not occur until the officer intends to charge the suspect with a specific crime. Since this intent is not present in an investigatory stop, no arrest occurs; thus the absence of probable cause does not deprive the detention of constitutionality.[22]

*Reasonableness of the Stop*

Formal legal reasoning will not in itself be sufficient to determine whether detention for questioning should be allowed. The constitutional balance which best reflects the demands of a democratic society must be struck by considering the reasonableness of the statutory authority.[23] A primary factor in determining the reasonableness of the "stop" is the extent to which individual freedom is invaded. The "stop" may be a lesser invasion of privacy than an arrest, but it still constitutes a severe, though brief, intrusion upon personal security.[24] Although the person detained is not subjected to the processes of an arrest, he may feel compelled, by reason of ignorance, fear, or respect, to submit to the officer's authority. Thus, although there may be a detention without the exercise of physical force, the detention is rarely voluntary and some degree of compulsion is to be expected.[25]

On the other hand, such invasion of individual privacy may

F. Supp. 364 (E.D. Pa. 1967); United States v. Thomas, 250 F. Supp. 771 (S.D.N.Y. 1966); People v. Rivera, 14 N.Y.2d 411, 201 N.E. 2d 32, 252 N.Y.S. 2d 458 (1964), *cert. denied* 379 U.S. 978 (1965). The Louisiana provision sanctioning a temporary detention for questioning apparently follows the distinction relied upon in the above instances. *See* note 9 *supra*.

22. *See, e.g.*, United States v. McKendrick, 266 F. Supp. 718 (S.D.N.Y. 1967); Michaels v. State, 2 Md. App. 424, 234 A.2d 772 (1967).

23. Sibron v. New York, 88 S. Ct. 1889, 1902 (1968). *See* Terry v. Ohio, 88 S. Ct. 1868, 1879-80 (1968).

24. Terry v. Ohio, 88 S. Ct. 1868, 1877-79 (1968).

25. Comment, 41 S. CAL. L. REV. 161 (1968). In addition the persons who will bear the brunt of the power to stop and question will be the members of the minority groups in the cities. Indiscriminate use of the detention for questioning will excite the already tense relations between these groups and police officers and will act as a catalyst for social unrest. PRESIDENT'S COMM'N ON LAW AND ADMINISTRATION OF JUSTICE, THE TASK FORCE REPORT: THE POLICE 184 (1967). See also Foote, *Safeguards in the Law of Arrest*, 52 N.W. U.L. REV. 16 (1957); Reich, *Police Questioning of Law Abiding Citizens*, 75 YALE L.J. 1161 (1966).

be justified by the advantages accruing to society.[26] Pre-arrest detention is deemed essential, because without it there is a gap in the public protection by the police. It is reasoned that these advantages to society would far outweigh any inconvenience to the person detained, especially since the innocent person could explain his actions, clear himself and be on his way in minutes.[27] Consequently, to protect these interests the grounds for allowing an investigatory stop need not be as incriminating as those upon which an arrest may be based.

With these considerations in mind, the United States Supreme Court may have lain the groundwork for upholding an investigatory detention.[28] First, the Court in *Terry v. Ohio*,[29] although stating that it did not decide the constitutional validity "of an investigative 'seizure' upon less than probable cause for purposes of 'detention' and/or interrogation,"[30] implicitly recognized the authority of police, in the proper circumstances, "to approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest."[31] Secondly, while side-stepping the problems of the "stop," the Court in *Terry* held that there are circumstances which permit a "frisk."[32] Justice Harlan,[33] in his concurring opinion, recognized the weakness of such a conclusion without

26. Without this police tool the governmental interests in providing effective prevention and detecting of crime would be severely hampered. Terry v. Ohio, 88 S. Ct. 1868 (1968). *See also* Ronayne, *The Right To Investigate and New York's "Stop and Frisk" Law*, 33 FORDHAM L. REV. 211 (1964); Seigel, *The New York "Frisk" and "Knock-not" Statutes: Are They Constitutional?*, 30 BROOKLYN L. REV. 274 (1964); Traynor, *Mapp v. Ohio at Large in the Fifty States*, 1962 DUKE L.J. 319 (1962); Warner, *The* Uniform Arrest Act, 28 VA. L. REV. 315, 343-47 (1942); Wilson, Police Arrest Privileges in a Free Society: A Plea for Modernization, 51 J. CRIM. L.C. & P.S. 395 (1960). Prohibition of the authority to "stop and frisk" could lead to radical changes in the character of local law enforcement. It may result in forcing local law enforcement agencies to expand to attain a lesser, but more constant, invasion of privacy than the occasional invasions of the "stop and frisk." Another result might be a re-defining of probable cause to allow the officer more freedom to arrest suspicious persons. Comment, 41 So. CAL. L. REV. 161 (1968).

27. United States v. Thomas, 250 F. Supp. 771 (S.D.N.Y. 1966).

28. The court implied that a momentary detention did not constitute an arrest. Rios v. United States, 364 U.S. 353 (1960). The Court considered the arrest not to have occurred when the car was stopped subsequent thereto. Brinegar v. United States, 338 U.S. 160 (1949). The Court found an arrest not when a car was stopped and searched, but when the contraband was found. Carrol v. United States, 267 U.S. 132 (1925). *But see* Henry v. United States, 361 U.S. 98 (1959). The Court there found an arrest when the officer restricted the defendant's movements, but it limited its holding to the facts (very unusual facts in that the government admitted arrest).

29. 88 S. Ct. 1868 (1968).

30. *Id.* n.16.

31. *Id.* at 1880.

32. *See* text accompanying note 63 *infra*.

33. Terry v. Ohio, 88 S. Ct. 1868, 1885 (1968), Justice Harlan concurring.

considering the constitutionality of the "stop." He pointed out that if the policeman had a right to disarm, rather than avoid, the individual for his own protection, he must have a right to insist upon a *forcible stop.* Justice White,[34] also concurring, observed that nothing in the Constitution prohibits a policeman from addressing questions to pedestrians; however, absent special circumstances the person approached may not be detained or frisked. He asserted that, given the proper circumstances, a person may be briefly detained against his will while pertinent questions are asked. After balancing the investigatory needs of the police against the personal security of the individual, the Supreme Court will probably uphold the constitutional propriety of an investigatory "stop" as provided for in the Louisiana statute; but the exact conditions and limitations of such a procedure remain unforeseen.[35]

The primary limitation in the Louisiana statute is that the "stop" must be grounded upon reasonable suspicion.[36] As Louisiana is free to develop its own law of search and seizure to meet the needs of local law enforcement,[37] it may label its standards at whim or caprice. Ultimately, however, it is not the language employed by the statute which determines its reasonableness, but the reasonableness of the acts which it sanctions.[38]

The Louisiana provision authorizes a detention, as does the New York Stop and Frisk Law, when the officer "reasonably suspects" the person is engaged in criminal activity.[39] The phrase "reasonably suspects" is said to mean a "conglomerate of such circumstances as would merit the sound suspicions of a properly alert policeman performing his sworn duty."[40] This definition coupled with the Supreme Court's test of reasonableness[41] supplies a standard no less endowed with an objective meaning than the phrase "probable cause" and is considered as somewhat below

34. *Id.* at 1886, Justice White concurring.

35. The Court must analyze certain factors to determine whether the detention in each instance was reasonable, *i.e.*, the reasonable suspicion of the police officer, the length of detention, the location of the detention, and the admissibility of statements made by the suspect.

36. *See* note 9 *supra.*

37. Ker v. California, 374 U.S. 23 (1963).

38. Sibron v. New York, 88 S. Ct. 1889 (1968). *See also* People v. Peters, 18 N.Y.2d 238, 219 N.E.2d 595, 273 N.Y.S.2d 217 (1966).

39. *See* note 9 *supra.*

40. Kuh, *Reflection on New York's "Stop and Frisk" Law and Its Claimed Unconstitutionality,* 56 J. CRIM. L.C. & P.S. 32, 33 (1965).

41. "[T]he facts must be judged against an objective standard: Would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action was appropriate?" Terry v. Ohio, 88 S. Ct. 1868, 1880 (1968).

probable cause on the scale of absolute knowledge of criminal activity.[42] This standard appears to be as workable as any proposed.

The acts authorized by the statutory grant of authority are readily viewed as reasonable when it is remembered that the standard of reasonable suspicion is an objective test. Reasonable suspicion cannot be based upon the good faith suspicions of the police officer;[43] it must not be based solely on race, poverty, type of clothing, or age.[44] For the detention to be reasonable in each situation, the officer should be able to "point to specific and articuable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."[45]

Furthermore, to prevent abuse of this investigatory tool the suspect should not be detained longer than the time necessary to conduct an on-the-street investigation.[46] The investigation should not be extended beyond the time reasonably necessary for the person detained to identify himself and explain his action and for the police to check his explanation with readily available information.[47] If the information needed to verify or contradict the suspect's explanation is not readily ascertainable, he should be released.[48]

The Louisiana statute does not authorize the removal of the suspect from the on-the-street encounter. Usually, when the suspect is transported to the police station an arrest is said to have occurred.[49] This rule seems desirable, because restriction of the individual's freedom of movement is a severe intrusion. Therefore, unless exceptional circumstances are shown which explain why the suspect was taken to the station, it seems desirable that

42. United States v. Rundle, 274 F. Supp. 364, 369 (E.D. Pa. 1967); People v. Peters, 18 N.Y.2d 238, 244, 219 N.E. 2d 595, 599, 273 N.Y.S.2d 217, 222 (1966). *See also* Seigel, *The New York "Frisk" and "Knock-not" Statutes: Are They Constitutional?*, 30 BROOKLYN L. REV. 274 (1964).

43. Terry v. Ohio, 88 S. Ct. 1868, 1880 (1968). *See, e.g.*, Beck v. Ohio, 379 U.S. 89 (1964); Rios v. United States, 364 U.S. 253 (1960).

44. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 184 (1967).

45. Terry v. Ohio, 88 S. Ct. 1868, 1880 (1968).

46. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 185 (1967).

47. United States v. Middleton, 344 F.2d 78 (2d Cir. 1965); United States v. LaVallee, 270 F.2d 513 (2d Cir. 1959); United States v. Thomas, 250 F. Supp. 771 (S.D.N.Y. 1966).

48. United States v. Middleton, 344 F.2d 78 (2d Cir. 1965).

49. State v. Harbatuk, 95 N.J. Super. 54, 229 A.2d 820 (N.J. 1967); Caminito v. City of New York, 45 Misc. 2d 241, 256 N.Y.S.2d 670 (Sup. Ct. 1965).

probable cause be required to remove the person detained from the place of detention to any other place against his will.[50]

*Right To Question*

In *Miranda v. Arizona*[51] the United States Supreme Court held that law enforcement officials must advise an arrested person of certain constitutional rights before interrogation.[52] Since the suspect is removed to unfamiliar surroundings and placed in a police dominated atmosphere, the Court concluded that procedural safeguards must be implemented to protect the suspect from "the compelling atmosphere inherent in the process of in-custody interrogation."[53] Compulsion is presumed whenever the individual, in custody or deprived of his freedom in any significant way, is interrogated. Thus the *Miranda* warnings must be given to dispel the inherent compulsion and to enable the suspect to waive his constitutional rights intelligently.[54]

The issue arises, therefore, do the *Miranda* safeguards apply to a person "stopped" for questioning? One writer observed that "on-the-street detention under certain circumstances may have enough of the characteristics of a station house interrogation for a court to conclude that there is compulsion within the meaning of *Miranda*."[55] Considering that the detention may place the individual in an incommunicado, police dominated atmosphere, the same type of fear may be instilled as in a station house interrogation. However, one may argue that the police do not

50. This is the thrust of the ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE §§ 2.00, 2.02(1) (Tent. Draft No. 1, 1966). *See* United States v. Mitchell, 179 F.Supp.. 639 (D.D.C. 1967), where the court found an exception. The stop was made on a busy street corner in the middle of the day, the police station was only half block away and the suspect was in his automobile when detained. Since the suspect was not greatly inconvenienced and would have proven an obstacle to traffic, removal to the police station was reasonable.

51. 384 U.S. 436 (1966).

52. *Id.* at 444: "The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right to silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."

53. *Id.* at 478.

54. Abrams, *Constitutional Limitations on Detention for Investigation*, 52 IOWA L. REV. 1093, 1113 (1967).

55. *Id.* at 1114.

"stop" an individual to coerce a confession, especially since it is not certain that a crime has been committed. Their goals are to prevent and to investigate crime, not to implicate every person on the street. Moreover, the psychological coercions and deceptions of the station house are not easily employed in this type of circumstance.[56]

The *Miranda* decision, asserts one commentator,[57] affirmed the distinction made in *Escobedo v. Illinois*[58] between accusatory and investigatory processes. If the main object of the police in stopping and questioning is investigatory, rather than accusatory, the *Miranda* warnings must be given at the time the right to counsel in *Escobedo* arose. Thus, since the suspect's rights in *Escobedo* did not arise until the investigation focused on him as an accused, the *Miranda* warnings need not be given when the police are only conducting a general investigation.[59]

This contention has two major weaknesses. First, the stopping for questioning of a suspect may be considered within the accusatory process, because statements at this critical stage may be just as self-incriminating as those made after an arrest.[60] Secondly, a footnote to the *Miranda* decision explained the *Escobedo* language in terms of the *Miranda* holding, not vice versa. Following its desire to prevent interrogations in compelling circumstances the Court seemed to say that the investigation focuses on the individual whenever he is deprived of his freedom in any significant way. Therefore, the distinction in *Escobedo* between the investigatory and accusatory procedures of police seems meaningless, today and the *Miranda* warnings must be given even when the police are conducting a general investigation.

This interpretation of *Miranda,* although seemingly compelled by the language of the Court, would seriously hamper the utility of detention as an investigatory tool. If the officer is required to give the constitutional warnings to the suspect, then the person detained will likely refuse to give any information. Instead, the privilege against self-incrimination should be inapplicable

56. *Id.* at 1113; Comment, 41 So. Cal. L. Rev. 161, 180 (1968).

57. A. Specter & M. Katz, Police Guide To Search and Seizure, Interrogation, and Confession (1967).

58. 378 U.S. 478 (1964).

59. A. Specter & M. Katz, Police Guide To Search and Seizure, Interrogation, and Confession 9 (1967).

60. Comment, 41 So. Cal. L. Rev. 161, 180 (1968); *cf.* Abrams, *Constitutional Limitations on Detentions for Investigation*, 52 Iowa L. Rev. 1093, 1113 (1967).

to general investigations conducted on the street when the purpose of the detention is to obtain the person's name, address, and an explanation of his suspicious behavior. Since the suspect would have to be released or arrested if detained longer than is necessary to check his identification or explanation of his activities, he would be afforded ample protection. The governmental interests in prevention and investigation of crime would be enhanced while the individual's rights are protected. In addition, the duty imposed on the suspect to respond would extend only to limited enquiries permitted by statute. Therefore, if the questioning sought more than an individual's identity and an explanation of his suspicious activities, the questioning, outside the purview of the statutory provisions, would be more than merely investigatory and the warnings would attach.

*The Frisk*

Traditionally, a complete search of the person has been permitted when probable cause exists.[61] Such a search has the two basic purposes of procuring evidence of a particular crime and self protection of the police officer. Since suspicious conduct alone justifies a "stop" without reference to a particular crime, only the latter purpose justifies a "frisk."[62] Regarding the safety of the officer as paramount to the brief, though considerable, personal invasion of the "frisk," the United States Supreme Court concluded, in *Terry v. Ohio*,[63] "that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime."[64] The limited search for dangerous weapons sanctioned in the Louisiana statute, as all searches in the absence of probable cause for arrest, must be strictly circumscribed by the exigencies which justify its initiation.[65]

As in the "stop" situation, the standard of "reasonable sus-

61. Beck v. Ohio, 379 U.S. 89 (1964); Rios v. United States, 364 U.S. 253 (1960); Henry v. United States, 361 U.S. 98 (1959).

62. Terry v. Ohio, 88 S. Ct. 1868, 1882 (1968).

63. 88 S. Ct. 1868 (1968).

64. *Id.* at 1883. This authority seems to have general applicability whenever the officer is faced with situations endangering his safety and is not necessarily dependent upon the "stop" situations. *See also* Remington, *The Law Relating to "On the Street" Detention, Questioning and Frisking of Suspected Persons and Police Arrest Privileges in General*, 51 J. CRIM. L.C. & P.S. 386 (1960); Wilson, *Police Arrest Privileges in a Free Society: A Plea for Modernization*, 51 J. CRIM. L.C. & P.S. 395 (1960).

65. Warden v. Hayden, 387 U.S. 294 (1967), Mr. Justice Fortas concurring.

picion" is an objective one requiring that the officer be able to articulate specific facts and rational inferences therefrom which warrant the search.[66] But the facts which establish reasonable suspicion for the "frisk" are different in nature from those of the "stop." The issue is whether a reasonably prudent police officer in similar situations would be warranted in believing that the suspect was armed and dangerous and posed a threat to his safety and the safety of others.[67]

If the self-protective search is valid, what evidence obtained by it is admissible in proceedings against the individual? Obviously, since the "frisk" is designed to discover dangerous weapons, articles of this nature are admissible when the officer properly conducts a reasonable search.[68] Difficulty arises, however, when the disclosed evidence is not a dangerous weapon. If the sole purpose of the "frisk" is to uncover dangerous weapons, the discovery of anything else will not be related to the purpose of the frisk.[69] Allowing officers to legally seize any evidence disclosed by the "frisk" encourages more frequent and indiscriminate use of the frisk as a device for obtaining evidence, rather than as an investigatory tool.[70] Such a danger is heightened by the fact that usually only the suspect and officer are present at the time of the frisk, and probably the officer's testimony in such circumstances will be considered more credible.[71]

On the other hand, the main argument justifying the admissibility of objects disclosed other than weapons does not concern the scope of the frisk. The New York courts, in admitting burglary tools and narcotics, have stated that the issue is not the admissibility of the object ultimately found, but whether there was a right to find anything. Since the police officer possesses the right to frisk the suspect, any evidence disclosed by the frisk is seized pursuant to that right and is therefore unobjectionable.[72] Justice Harlan, concurring in *Sibron v. New York*, reit-

66. Terry v. Ohio, 88 S. Ct. 1868 (1968). *See* text accompanying note 45 *supra*.

67. Terry v. Ohio, 88 S. Ct. 1868 (1968). *See also* Beck v. Ohio, 379 U.S. 89 (1964); Brinegar v. United States, 338 U.S. 60 (1949); Stacey v. Emery, 97 U.S. 642 (1878).

68. Terry v. Ohio, 88 S.Ct. 1868, 1884-85 (1968).

69. People v. Sibron, 18 N.Y.2d 603, 219 N.E. 2d 196, 272 N.Y.S.2d 374 (1966) (Justice Van Voorhis dissenting); Note, 50 CORNELL L.Q. 529, 538 (1965).

70. People v. Sibron, 18 N.Y.2d 603, 219 N.E. 196, 272 N.Y.S.2d 374 (1966) (Justice Van Voorhis dissenting).

71. People v. Norris, 46 Misc.2d 44, 258 N.Y.S.2d 967 (Sup. Ct. 1965).

72. People v. Peters, 18 N.Y.2d 238, 219 N.E.2d 595, 273 N.Y.S.2d 217 (1966); People v. Sibron, 18 N.Y.2d 603, 219 N.E.2d 196, 272 N.Y.S.2d 374 (1966). *See also* United States v. Thomas, 250 F. Supp. 771 (S.D.N.Y. 1966); Traynor, *Mapp v. Ohio at Large in the Fifty States*, 1962 DUKE L.J. 319 (1962).

erated this position, stating that where the "frisk" is reasonable and lawful any contraband discovered incident thereto is admissible.[73] Louisiana courts may find such reasoning persuasive and admit objects other than weapons, especially since other objects are clearly admissible under the terms of the Louisiana statute.

*Conclusion*

The scope and exact meaning of the Louisiana "stop and frisk" statute is not certain, because the Louisiana Supreme Court has not interpreted it. However, from the above observation it follows that the statute is not unconstitutional on its face. Though there may be a temporary interference with the individual's right to privacy, the governmental interests sought to be protected should be considered overriding. In light of the nature and character of the "stop" it is reasonable to uphold Louisiana's detention for questioning, as a lesser "seizure" than an arrest, whenever the officer "reasonably suspects" the individual of criminal activity. If the *Miranda* warnings are applicable, an exception should be made to allow the officer to ascertain the identity of the suspect and obtain an explanation of his actions.

The provision relating to the "frisk" for dangerous weapons is just as strict as the test provided for in *Terry*, and will be upheld. The self-protective search is not dependent upon the "stop" alone, but could be used whenever the officer reasonably suspects that his safety is endangered. Where a reasonable "frisk" is completed, weapons uncovered incident thereto will be admissible. Additionally, any other evidence discovered incident to a limited self-protective search should be admissible; but because such a practice might be too difficult to administer or not justified by the exigencies of the situation, the courts may admit only dangerous weapons.

*Stewart E. Niles, Jr.*

73. Sibron v. New York, 88 S. Ct. 1889, 1906 (1968) (Justice Harlan concurring).