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Terry Stop or Arrest? The Washington Court Attempts a Distinction—State v. Williams, 102 Wn. 2d 733, 689 P.2d 1065 (1984)

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TERRY STOP OR ARREST? THE WASHINGTON COURT ATTEMPTS A DISTINCTION—*State v. Williams*, 102 Wn. 2d 733, 689 P.2d 1065 (1984).

In *State v. Williams*[1] the Washington Supreme Court attempted to set forth specific criteria for determining when a temporary detention exceeds the bounds of a *Terry* stop[2] and becomes an arrest, with the concomitant probable cause requirement.[3] The court relied on both the fourth amendment and article 1, section 7 of the state constitution as the bases for its standards. The holding, however, is fact-specific, and the court's discussion of the permissible scope and intensity of an investigatory stop does not adequately establish guidelines for the police to apply in a future situation. Further, because the court did not ground its decision firmly in state law, the limits of an investigatory stop in Washington may be modified by future federal rulings.

I. BACKGROUND

A. Terry *Stop or Arrest?*

Both the fourth amendment and article 1, section 7 of the Washington State Constitution protect against unreasonable searches and seizures. A search or seizure perpetrated without a warrant is per se unreasonable[4] unless it is within one of the "jealously and carefully drawn"[5] exceptions to the rule. Those exceptions arise when society's interest in ensuring the safety of others or preventing the destruction of evidence outweighs the individual's interest in liberty and privacy.[6]

One of the specified exceptions to the rule is the "*Terry* stop," adopted by the United States Supreme Court in *Terry v. Ohio*.[7] *Terry* allows a limited detention when the police have an articulable suspicion of criminal activity, and it allows a pat-down search for weapons when police have a reasonable

1. 102 Wn. 2d 733, 689 P.2d 1065 (1984).
2. Terry v. Ohio, 392 U.S. 1 (1968).
3. 102 Wn. 2d at 740–41, 689 P.2d at 1069–70. This Note does not analyze the other issue in the case, whether the car impoundment and later "inventory" search were justified.
4. Coolidge v. New Hampshire, 403 U.S. 443, 454–55 (1971) (citing Katz v. United States, 389 U.S. 347, 357 (1967)).
5. Arkansas v. Sanders, 442 U.S. 753, 759 (1979) (quoting Jones v. United States, 357 U.S. 493, 499 (1958)).
6. Camara v. Municipal Court, 387 U.S. 523, 534–35 (1967).
7. 392 U.S. 1 (1968).

belief that the detained person may be armed.[8] The *Terry* Court justified this exception on the grounds that the detention is less intrusive than an arrest, and the search is necessary to protect the officer's safety.[9] The Court further explained in *Adams v. Williams*[10] that the *Terry* stop also allows brief stops of "suspicious" individuals to determine the individual's identity or to "maintain the status quo momentarily while obtaining more information."[11] Thus, brief questioning may accompany the *Terry* pat-down, without warrant or probable cause. The officer need not fear danger, but must have an articulable suspicion of wrongdoing.[12]

The Court recently broadened the scope of *Terry* to include the seizure of personal possessions in *United States v. Place*.[13] In a statement unnecessary to the judgment,[14] the Court concluded that *Terry* also allows the police to temporarily detain personal possessions for purposes of investigation.

8. *Id.* at 30. The articulable or reasonable suspicion standard was further clarified in United States v. Cortez, 449 U.S. 411 (1981), where the objective facts and circumstantial evidence provided sufficient basis to justify stopping a vehicle suspected of transporting illegal aliens. The *Cortez* Court held that the behavior of the government must be analyzed in reference to the "totality of the circumstances—the whole picture," and that the officer "must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Id.* at 417–18. "An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *Id.* at 417.

9. 392 U.S. at 22–27.

10. 407 U.S. 143 (1972).

11. *Id.* at 146.

In Dunaway v. New York, 442 U.S. 200 (1979), the Court iterated that *Terry* does not go so far as to allow a suspect to be picked up, taken to the station, and questioned without probable cause. Any detention for custodial interrogation requires probable cause.

The Burger Court has continued to grapple with the permissible scope of police activity in a *Terry* stop, setting guidelines on the purpose, amount of physical intrusion, and duration. In Florida v. Royer, 460 U.S. 491 (1983), the Court held that the stop was longer than necessary to accomplish the allowed purpose and that, although the permissible length will vary with the facts, the seizure must relate to the reason for the investigation. The police must accomplish the investigation by the least intrusive means available. *Id.* at 500.

In Michigan v. Long, 103 S. Ct. 3469 (1983), the Court broadened *Terry*, holding that a *Terry* pat-down search for weapons may extend beyond the person to the passenger compartment of the suspect's vehicle, stressing the risk to the officers. The Court referred to statistics that 30% of all police shootings occurred when the officer approached a suspect seated in a car. 103 S. Ct. at 3479–80 n.13 (citing Adams v. Williams, 407 U.S. 143, 148 n.3 (1972)). The Court emphasized that the suspicion of danger must be reasonable and that the suspect must have access to the car.

12. Justice Douglas, dissenting in *Terry*, warned that "[t]here have been powerful hydraulic pressures throughout our history that bear heavily on the Court to water down constitutional guarantees and give the police the upper hand." 392 U.S. at 39. Many of the *Terry* modifications reflect the continuing strength of those pressures.

13. 103 S. Ct. 2637 (1983).

14. The Court determined that although the seizure of personal possessions was reasonable, the time involved, 90 minutes, exceeded the permissible length of an investigative seizure, *id.* at 2645–46; however, it declined to state what would be reasonable.

Although no suggestion of danger was present in *Place*, the exigency of removal or destruction of evidence justified the seizure.[15]

Terry v. Ohio and its progeny have thus created a two-tiered search and seizure law.[16] The law allows police to temporarily detain an individual without probable cause for arrest. Such a temporary detention is not unreasonable under the fourth amendment because of its brevity and minimal intrusion, and because it protects police officers and prevents the destruction of evidence. The courts' recurring problem is in determining when a detention is so intrusive that it becomes an arrest subject to the more exacting probable cause requirement.[17] The courts receive little help from the search and seizure provisions in either the Washington or the federal constitution. Both provisions are very general, they cover a broad range of government activity, and they cannot easily be reduced to "complete order and harmony."[18]

B. Federal vs. State Law

For many years the Washington Supreme Court followed federal decisions and did not attempt to develop any independent state constitutional law.[19] Since the Burger Court has been restricting individual rights in the

15. Until *Place*, such exigency was grounds for search or seizure without a warrant but only in connection with a valid arrest for which there was probable cause. *Cf.* United States v. Ross, 456 U.S. 798 (1982) (warrantless search of auto for drugs permissible because of inherent mobility of auto).

16. Some commentators see the search and seizure law as three-tiered. *See* Latzer, Royer, *Profiles, and the Emerging Three-Tier Approach to the Fourth Amendment*, 11 AM. J. CRIM. L. 149 (1983). The first tier in such an approach includes all the police-citizen contacts that do not rise to the level of a search or seizure because they are minimally intrusive. The second tier is the *Terry* stop, subject to the reasonable suspicion requirement, and the third tier is an arrest, subject to the more stringent probable cause requirement. Former Justice Potter Stewart developed the concept in United States v. Mendenhall, 446 U.S. 544, 553–54 (1980), and the four justice plurality in *Royer* appears to adopt the idea in dictum. 460 U.S. at 497–98.

17. Many appellate decisions in search and seizure cases deal with the difficulty of establishing a bright line standard. For the relative merits of a bright line approach compare Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 409–39 (1974) (definite guidelines for police conduct are required because of the tremendous discretionary power of the individual officers) with Alschuler, *Bright Line Fever and the Fourth Amendment*, 45 U. PITT. L. REV. 227, 231 (1984) (an attempt to establish bright line search and seizure rules would result only in an "unmanageable multiplicity of rules—more bright lines than the human eye can keep in view").

18. Coolidge v. New Hampshire, 403 U.S. 443, 483 (1971). The Court in *Coolidge* acknowledged the difficulty of establishing a "single coherent analytical framework" for fourth amendment decisions. *Id.* Because each application of search and seizure law is fact-specific, the appellate courts act essentially as super trial courts.

19. For an excellent summary and discussion of this trend, see Utter, *Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights*, 7 U.P.S. L. REV. 491 (1984). *See also* Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977); Linde, *E Pluribus—Constitutional Theory and State Courts*, 18 GA. L. REV. 165 (1984).

last fifteen years, however,[20] the Washington court has turned to the history and text of the state constitution to provide extra protection for individual rights.[21] In recent years the Washington court has specifically held that article 1, section 7[22] of the state constitution grants more protection to individuals than the fourth amendment[23] in several areas.[24]

A state court's analysis of the protection guaranteed by its own constitution or laws may be either state-specific or federally oriented.[25] A state-specific analysis relies not on any federal precedent but upon differences in the wording of the state constitution, differences in the intent of the framers,

20. *See* Utter, *supra* note 19, at 499 n.28.

21. The Bill of Rights, as applied to the states by incorporation in the fourteenth amendment, is recognized as the minimum standard of individual liberties. *See* Alderwood Assocs. v. Environmental Council, 96 Wn. 2d 230, 237, 635 P.2d 108, 112 (1981); Brennan, *supra* note 19, at 491–95. The concept of federalism has been applied by Washington, as well as many other states, to find a basis in the state constitutions and laws for stronger individual rights. See *Developments in the Law—The Interpretation of State Constitutions*, 95 HARV. L. REV. 1324, 1371–99 (1982), for a discussion of this trend. *See also infra* note 24.

22. Article 1, § 7 of the Washington State Constitution provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

23. The fourth amendment to the United States Constitution provides,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

24. For example, in State v. Chrisman, 100 Wn. 2d 814, 821, 676 P.2d 419, 424 (1984), the court held that an arrest for a misdemeanor does not permit warrantless entry into the arrestee's home without an articulable threat to safety, likelihood of escape, or danger of the destruction of evidence. The court found independent state grounds for its decision after the United States Supreme Court reversed an earlier decision in the same case, based upon fourth amendment grounds. State v. Chrisman, 94 Wn. 2d 711, 619 P.2d 971 (1980), *rev'd*, 455 U.S. 1 (1982).

In State v. Ringer, 100 Wn. 2d 686, 698–99, 674 P.2d 1240, 1247–48 (1983), the court held that warrantless searches incident to arrest may extend only to areas within the physical control of the arrestee, and are limited to removing weapons or preventing the destruction of evidence. The court refused to follow New York v. Belton, 453 U.S. 454 (1981), in which the United State Supreme Court held that the entire inside of a car may be searched without a warrant when the driver is validly arrested. For a discussion of *Ringer*, see Note, *New Limits on Police Vehicle Searches in Washington*, 60 WASH. L. REV. 177 (1984).

In State v. White, 97 Wn. 2d 92, 108–10, 640 P.2d 1061, 1070–71 (1982), the court rejected the rationale of Michigan v. DeFillippo, 443 U.S. 31 (1979), that the purpose of the exclusionary rule is deterrence. The court reasoned that the exclusionary rule exists not for deterrence but to ensure the individual right to privacy; the exclusionary rule in Washington brooks no recognition of an independent source doctrine or inevitable evidence rule because an individual's right to privacy has no express limitations such as those embodied in the fourth amendment.

In State v. Simpson, 95 Wn. 2d 170, 180–81, 622 P.2d 1199, 1206 (1980), the court held that an individual has automatic standing to contest an illegal search or seizure, specifically rejecting the holding of United States v. Salvucci, 448 U.S. 83 (1980).

Finally, in State v. Hehman, 90 Wn. 2d 45, 47–49, 578 P.2d 527, 528–29 (1978), the court held that an individual charged with a minor traffic violation may not be put under custodial arrest, rejecting United States v. Robinson, 414 U.S. 218 (1978).

25. *See Developments in the Law, supra* note 21, at 1384–94.

and specific state cases. A federally oriented approach concentrates on the status of federal law, applies the reasoning of federal decisions or dissents, but reaches a different result than the majority of federal decisions. Many decisions involve an approach somewhere between these two extremes, relying partly on state law and partly on federal precedent.[26]

Courts using a federally oriented approach have frequently been overturned by the United States Supreme Court because they inadequately justified their departure from federal precedent.[27] In *Michigan v. Long*[28] the Supreme Court explained that a state result that goes beyond federal precedent in establishing individual rights would be free from federal review if the state decision indicated "clearly and expressly" that it was "based on bona fide separate, adequate, and independent [state] grounds."[29] The exemption from federal review applies also to a state decision that followed only federal precedent and federal reasoning, so long as the court clearly stated (1) that the federal law was being used only to guide the interpretation of state law, and (2) that the federal doctrine did not compel the result.[30] If, on the other hand, the court uses federal law in its reasoning, and the "adequacy and independence of any possible state law ground is not clear from the face of the opinion," then the United States Supreme Court has jurisdiction to review the result.[31]

II. THE *WILLIAMS* DECISION

A. *"The Facts of the Case"*

John L. Williams was convicted of second degree burglary and first degree theft after the trial court refused to suppress evidence obtained in a search of Williams' car after his detention by police.[32] The court of appeals affirmed the conviction, but the Washington Supreme Court reversed, holding that the evidence found in the car was inadmissible on two grounds. First, the car search was conducted pursuant to an illegal seizure of the

26. *Id.* at 1385.

27. *See, e.g.*, State v. Chrisman, 94 Wn. 2d 711, 619 P.2d 971 (1980), *rev'd*, 455 U.S. 1 (1982), discussed *supra* note 24.

28. 103 S. Ct. 3469 (1983).

29. *Id.* at 3476. The Michigan court relied entirely on federal law in its analysis, making only two brief references to its state constitution. *Id.* at 3474 n.3. Recognizing the need for doctrinal consistency when "sensitive issues of federal-state relations are involved," *id.* at 3475, and acknowledging its "[r]espect for the independence of state courts," *id.*, the Court outlined a consistent approach for determining when a state decision, on purported state grounds, would be free from federal review.

30. *Id.* at 3476.

31. *Id.*

32. 102 Wn. 2d 733, 734, 689 P.2d 1065, 1066 (1984).

suspect. Second, the warrantless impoundment and inventory of the car's contents were improper.[33]

On April 7, 1981, police received a signal from a silent burglar alarm in a residence. When an officer arrived at the residence he saw a vehicle begin to drive away. He blocked the vehicle's path, and at gun point ordered the driver to turn off the car, throw out the keys, and raise his hands. When a second officer arrived, also with gun drawn, they ordered the driver out of the car, handcuffed him, pat-searched him, read him his rights, and put him in the back of the police car.[34] After entering the house and determining that a burglary had occurred, they asked the suspect what he was doing there. When his answer did not satisfy them, they took him to the police station.[35] The police did not ask Williams for any identification until he was at the police station.[36]

The police impounded Williams' car and, during an inventory of its contents, they found a jewelry box partially hidden under the front seat. They opened the box and found jewelry. The police then sealed the car and transported it to the police yard until a search warrant could be obtained.[37]

B. The Majority Decision

The court reversed Williams' conviction primarily because his detention exceeded the bounds of a *Terry* stop.[38] The stop therefore became an arrest. Before the investigation of the house and Williams' car the police had no probable cause to believe that Williams had committted a crime; thus, the arrest was illegal.

The court pointed out that the fourth amendment requires that two inquiries be made into an investigative stop: first, whether the "initial interference with the suspect's freedom of movement [was] justified at its inception"; and second, whether the detention was related in its "intensity and scope" to those circumstances that justified the initial interference.[39]

The court did not argue that the original detention was improper, considering the suspect's proximity to the house where the alarm had so recently sounded. The court held, however, that the scope and intensity of the

33. The Washington Supreme Court, in State v. Simpson, 95 Wn. 2d 170, 622 P.2d 1199 (1980), set forth the requirements for lawful impoundment. A car may be impounded if: (1) it was stolen or used in the commission of a felony and is therefore evidence; (2) the removal of the car is necessary for traffic or safety reasons and the defendant has no way to arrange for its removal; or (3) the auto was used to commit a traffic violation for which the state specifically allows impoundment. *Id.* at 189, 622 P.2d at 1211.

34. 102 Wn. 2d at 734–35, 689 P.2d at 1066.

35. *Id.* at 735, 689 P.2d at 1066–67.

36. *Id.* at 740, 689 P.2d at 1069.

37. *Id.* at 735, 689 P.2d at 1067.

38. *Id.* at 736, 689 P.2d at 1067.

39. *Id.* at 739, 689 P.2d at 1069.

detention did not satisfy the *Terry* requirements that an investigative stop be temporary, lasting no longer than necessary to dispel or confirm the officer's suspicion, and that the least intrusive means available be used. Specifically, the Washington court evaluated (1) the purpose of the stop, (2) the degree of physical intrusion, and (3) the duration of the stop, and determined that Williams' seizure was so intrusive that it amounted to an arrest and therefore required probable cause.[40]

Considering first the purpose of the stop, the court concluded that the officer's purpose did not fit within the narrow *Terry* and *Adams v. Williams* object, of temporary detention to determine the suspect's identity and reason for being in the area. Rather, the purpose for detaining Williams was to prevent his disappearance while the officer determined if a crime had been committed.[41]

Second, the court determined that the degree of physical intrusion was excessive, considering the alleged crime and the behavior of the defendant. The degree of force—drawn guns, handcuffs, and seclusion—was excessive since the circumstances gave no indication that the suspect was dangerous.[42] The court also pointed out that any such detention should be related to an investigation of the suspect, that "such [a] relationship is essential,"[43] and that in this case the police were investigating a crime, not a suspect. A citizen's right to be free of governmental interference requires that any interference, absent a dangerous situation, be brief and be directed only to determining the suspect's identity, reason for being in the area of the crime, and possible involvement in the crime.[44] Williams was not asked why he was in the area until after he was handcuffed and placed in the police car, and he was not asked his identity until he was taken to the police station.

Finally, the court held that the duration of Williams' detention was excessive.[45] Considering the intrusive nature of the police activities, the court concluded that those activities constituted an arrest,[46] and that at the

40. *Id.* at 740–41, 689 P.2d at 1069–70.

41. *Id.* at 740, 689 P.2d at 1069.

42. *Id.* The United States Supreme Court has not ruled on the allowable degree of force when distinguishing a stop from an arrest. *See* Williamson, *The Dimensions of Seizure; The Concepts of "Stop" and "Arrest,"* 43 OHIO ST. L.J. 771, 814–17 (1982). However, the lower federal courts have considered the question and upheld stops at gunpoint when the threat of force was necessary to protect the officer from apparent danger. *See id.* at 816 n.252, and cases cited therein. The Ninth Circuit, in United States v. Strickler, 490 F.2d 378 (9th Cir. 1974), held that encircling a suspect's car and ordering him out at gun point constituted an arrest. The armed approach to the car, whose occupants had been commanded to raise their hands, could not be equated to a *Terry* stop. *Id.* at 380.

43. 102 Wn. 2d at 741, 689 P.2d at 1069.

44. *Id.* at 740–41, 689 P.2d. at 1069–70.

45. *Id.* at 741, 689 P.2d. at 1070.

46. *Id.* The decision thus overrules in part State v. Byers, 88 Wn. 2d 1, 6, 559 P.2d 1334, 1336 (1977) (*Byers* blurred the distinction between an arrest and a *Terry* stop, suggesting that an arrest occurs whenever the suspect is not free to go). 102 Wn. 2d at 741 n.5, 689 P.2d at 1070 n.5.

time of the arrest there was no probable cause to believe a crime had been committed. The police had nothing beyond physical proximity to connect the suspect to the potential crime. Because the seizure of Williams was thus unreasonable, the resulting seizure and search of Williams' auto was likewise unreasonable.[47]

The majority also pointed out that its conclusion is required not only by the *Terry* interpretation of the fourth amendment, but independently by article 1, section 7 of the state constitution. In an apparent move to preclude Supreme Court review, the court, without analysis, stated that "the language of Const. art 1, § 7 forbids police seizures of this nature."[48]

C. *The* Williams *Dissent*

Justice Dimmick's dissent noted that the majority offers no clear guidelines to the police on how to proceed in future situations.[49] Further, Justice Dimmick argued that the police actions were reasonable considering the totality of the circumstances;[50] occasionally a longer than momentary freeze of the situation is allowed, when the detention is collateral to an investigation.[51]

The dissent distinguished those cases where the detention itself was the investigative tool; a lengthy detention in that situation is unjustified because it no longer serves only to maintain the status quo.[52] Williams was not interrogated during the detention, nor was his car searched at that time; he was merely held while the police determined that a crime had been committed. When he then had no plausible explanation for his presence at the scene, the officers arrested him.

III. EFFECT OF THE DECISION

The effect of the *Williams* decision is unclear for several reasons. First, the decision is essentially one of fact—what is "reasonable" behavior on the part of a police officer when confronted with a particular situation? In order to qualify as a *Terry* stop the scope and duration of the detention must

47. 102 Wn. 2d at 742, 689 P.2d at 1070.

48. *Id.* at 742, 689 P.2d at 1070; *see supra* Part I*B*.

49. *Id.* at 744, 689 P.2d at 1071 (Dimmick, J., dissenting); *see supra* note 17.

50. *Id.* at 745, 689 P.2d at 1072 (Dimmick, J., dissenting). The basic difference between the majority and dissent, on the issue of the propriety of the detention, is a different interpretation of the reasonableness of the police behavior, rather than a different interpretation of the fourth amendment or article 1, § 7.

51. *Id.* Justice Dimmick referred for support of this position to Michigan v. Long, 103 S. Ct. 3469 (1983), and Michigan v. Summers, 452 U.S. 692 (1981).

52. *See, e.g.*, Dunaway v. New York, 442 U.S. 200 (1979); Davis v. Mississippi, 394 U.S. 721 (1968).

not be overly intrusive, but the court cannot establish a bright line for guidance when each encounter is different.[53]

The *Williams* court analyzed the scope and intrusiveness of Williams' detention in light of three criteria: duration, intensity, and purpose. It found that Williams' treatment was faulty under all three criteria. The court did not, however, point out the relative importance of the factors, or whether violating any one or two factors would be impermissibly intrusive. Furthermore, when considering the purpose of the stop, the court purported to create a distinction between the investigation of a crime and the investigation of a suspect. The opinion, however, does not clearly explain that subtle difference. Both the police and the trial courts will have difficulty distinguishing between a detention to hold an individual while the police determine whether a crime was committed, and a detention to hold an individual to determine whether that person committed a crime.

The second problem regarding the future effect of the *Williams* decision is that the composition of the Washington Supreme Court has changed significantly since the opinion was rendered in October 1984. Neither Justice Rosellini, who wrote the opinion, nor Justice Dimmick, who authored the dissent, remain on the court. Of the nine justices who ruled on *Williams* only five remain, three of whom signed the dissent.[54] The change in the court, coupled with the factual nature of the decision, indicate that on slightly different facts in a future case the court could reach a contrary result.

Third, the majority opinion may not meet the *Michigan v. Long* requirements.[55] The decision is clearly federally oriented.[56] The entire analysis of the validity of the detention is based upon federal case law,[57] without even a reference to *State v. White*,[58] in which the Washington court adopted *Terry v. Ohio* and explained its application under article 1, section 7.[59] Although the court states that "[m]oreover, our conclusion is independently required by article 1, section 7 of our state constitution,"[60] the state analysis is limited to citing *State v. Chrisman*,[61] *State v. Ringer*,[62] and *State*

53. *See supra* note 17.

54. The three remaining justices who concurred in the dissent were Brachtenbach, Dolliver, and Dore. The two remaining justices who concurred in the majority opinion were Pearson and Utter. The other two concurrences were by Williams, C.J., and Cunningham, J., Pro-Tem. Justice Anderson did not participate in the decision.

55. *See supra* notes 27–31 and accompanying text.

56. *See supra* notes 25–26 and accompanying text.

57. 102 Wn. 2d at 736–41, 689 P.2d at 1068–70.

58. 97 Wn. 2d 92, 640 P.2d 1061 (1982).

59. *Id.* at 105–06, 640 P.2d at 1068–69.

60. 102 Wn. 2d at 741, 689 P.2d at 1070.

61. 100 Wn. 2d 814, 676 P.2d 419 (1984).

62. 100 Wn. 2d 686, 674 P.2d 1240 (1983).

v. Simpson[63] for the proposition that article 1, section 7 "provides heightened protection to our citizens' privacy rights."[64] In *Chrisman, Ringer,* and *Simpson* the court analyzed the particular facts and issues in terms of Washington law, relying on Washington precedent, and discussing the historical underpinnings of the different language in the two constitutions.

Three possible conclusions can be drawn regarding the adequacy of the state analysis in Williams: first, that the bare statement that "[m]oreover, our conclusion is independently required" is satisfactory under *Michigan v. Long* as a clear expresion of "bona fide separate, adequate, and independent grounds";[65] second, that the satisfactory state analysis in the prior cases is adequately incorporated in the *Williams* analysis by reference to those cases; or third, that the earlier cases stood because of their complete state analysis and without a comparable analysis *Williams* is vulnerable to Supreme Court reversal or, more likely, eventual overrule by a federal decision.

The court's bald statement that the Washington constitution requires the result does not appear to meet the *Michigan v. Long* formal requirements. The *Williams* court cited only federal search and seizure cases, and the court did not clearly state that the federal decisions were used for guidance only. Justice Utter recently recommended that both lawyers and judges should adopt terms and analytic methods that differ from those of the United States Supreme Court in order to "avoid the danger that excessive use of federal language may lead the federal courts to conclude that a decision based on state grounds was in reality based in part on federal law and, therefore, reviewable by the federal courts."[66] The *Williams* court failed to heed this advice.

The state analysis in *Williams* thus appears inadequate to withstand Supreme Court overrule. Each of the three earlier Washington decisions dealt with a questionable search or seizure, but all were on different questions within search and seizure law.[67] All three opinions properly analyzed the application of case law in a particular area. Since *Williams* covered a different application of article 1, section 7, complete analysis was again called for, but was not presented. Moreover, *Williams* involved the proper limits of a *Terry* stop, without probable cause for arrest; the previous three decisions all involved a search or seizure incident to arrest with probable cause. This factual difference further establishes the need for a full analysis, including reference to *State v. White,*[68] in which the Washington

63. 95 Wn. 2d 170, 622 P.2d 1199 (1980).
64. 102 Wn. 2d at 741–42, 689 P.2d at 1070; *see supra* note 24.
65. Michigan v. Long, 103 S. Ct. 3469, 3478 (1983); *see supra* notes 27–31 and accompanying text.
66. Utter, *supra* note 19, at 506.
67. *See supra* note 24.
68. 97 Wn. 2d 92, 640 P.2d 1061 (1982).

court considered the applicability of article 1, section 7 to a *Terry* stop. Regardless of whether the analysis was sufficient, by basing it entirely on federal precedent the court left the scope of a *Terry* stop in Washington subject to future domination by federal case law.

The fourth concern regarding the value of *Williams* in the future is the possible effect of the Ringer Committee.[69] The committee, formed at the request of the Washington State Attorney General in response to the *Ringer* decision, is recommending a constitutional amendment that would reword article 1, section 7 so that it is identical to the fourth amendment, with a further clause that henceforth Washington search and seizure law would be identical to federal law. This would remove the precedential value of *Chrisman, Simpson,* and *Ringer,* but the future of *Williams* would then depend on future federal interpretation of *Terry.* The *Williams* decision has added fuel to the Ringer Committee's fire, providing them with one more instance of why the state should follow federal search and seizure law.

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69. The Ringer Committee was formed at the request of the Washington State Attorney General, with the concurrence of the Washington Association of Prosecuting Attorneys and the Legal Advisors Division of the Washington Association of Sheriffs and Police Chiefs. It consists of one assistant attorney general, deputy prosecutors from five counties, and legal advisers from Seattle and Bellevue Police Departments. Its avowed purpose is to nullify the independent state grounds decisions on search and seizure law in Washington. *See Ringer Committee Recommendation* (copy on file with the *Washington Law Review*).