

privacy interests of cell phone owners, enact legislation that draws reasonable distinctions based on categories of information or perhaps other variables.

The regulation of electronic surveillance provides an instructive example. After this Court held that electronic surveillance constitutes a search even when no property interest is invaded, Congress responded by enacting Title III of the Omnibus Crime Control and Safe Streets Act of 1968. Since that time, electronic surveillance has been governed primarily, not by decisions of this Court, but by the statute, which authorizes but imposes detailed restrictions on electronic surveillance.

* * * Many forms of modern technology are making it easier and easier for both government and private entities to amass a wealth of information about the lives of ordinary Americans, and at the same time, many ordinary Americans are choosing to make public much information that was seldom revealed to outsiders just a few decades ago.

In light of these developments, it would be very unfortunate if privacy protection in the 21st century were left primarily to the federal courts using the blunt instrument of the Fourth Amendment. Legislatures, elected by the people, are in a better position than we are to assess and respond to the changes that have already occurred and those that almost certainly will take place in the future.

8. STOP AND FRISK

Under the monolithic approach to the Fourth Amendment which once obtained, the assumption was that every form of activity which constituted either a search or a seizure had to be grounded in the same quantum of evidence suggested by the Amendment's "probable cause" requirement. But this changed when the Supreme Court recognized in *Camara v. Municipal Court*, 387 U.S. 523 (1967), that at least some Fourth Amendment activity should be judged under a balancing test, that is, by "balancing the need to search against the invasion which the search entails." Doubtless the most significant application of this new balancing test came a year later when, in *Terry v. Ohio*, the first case in this section, the Court applied it to the common police practice of detaining suspicious persons briefly on the street for purposes of investigation. The next two cases, *Florida v. J. L.* and *Illinois v. Wardlow*, are two recent efforts by the Court to elaborate what constitutes sufficient grounds for a *Terry* stop.

If there is to be a discrete form of police activity, typically called stop-and-frisk, which is subject to a lesser evidentiary standard, then it is necessary to distinguish such activity from full-fledged arrests requiring probable cause on the one hand and no-seizure police encounters requiring no justification whatsoever on the other. The problems attendant the drawing of such lines are seen in *Florida v. Royer*, *United States v. Drayton*, *Brendlin v. California*, and *Rodriguez v. United States*.

TERRY V. OHIO

392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

CHIEF JUSTICE WARREN delivered the opinion of the court.

[Officer McFadden, a Cleveland plainclothes detective, became suspicious of two men standing on a street corner in the downtown area at about 2:30 in the afternoon. One of the suspects walked up the street, peered into a store, walked on, started back, looked into the same store, and then joined and conferred with his companion. The other suspect repeated this ritual, and between them the two men went through this performance about a dozen times. They also talked with a third man, and then followed him up the street about ten minutes after his departure. The officer, thinking that the suspects were "casing" a stickup and might be armed, followed and confronted the three men as they were again conversing. He identified himself and asked the suspects for their names. The men only mumbled something, and the officer spun Terry around and patted his breast pocket. He felt a pistol, which he removed. A frisk of Terry's companion also uncovered a pistol; a frisk of the third man did not disclose that he was armed, and he was not searched further. Terry was charged with carrying a concealed weapon, and he moved to suppress the weapon as evidence. The motion was denied by the trial judge, who upheld the officer's actions on a stop-and-frisk theory. The Ohio court of appeals affirmed, and the state supreme court dismissed Terry's appeal.]

* * * The question is whether in all the circumstances of this on-the-street encounter, [Terry's] right to personal security was violated by an unreasonable search and seizure.

We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity—issues which have never before been squarely presented to this Court. * * *

On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess. For this purpose it is urged that distinctions should be made between a "stop" and an "arrest" (or a "seizure" of a person), and between a "frisk" and a "search." Thus, it is argued, the police should be allowed to "stop" a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to "frisk" him for weapons. If the "stop" and the "frisk" give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal "arrest," and a full incident "search" of the person. This scheme is justified in part upon the notion that a "stop" and a "frisk" amount to a mere "minor inconvenience and petty indignity," which can properly be imposed upon the citizen in the interest of effective law enforcement on the basis of a police officer's suspicion.

On the other side the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed to date in the traditional jurisprudence of the Fourth Amendment. It is contended with

some force that there is not—and cannot be—a variety of police activity which does not depend solely upon the voluntary cooperation of the citizen and yet which stops short of an arrest based upon probable cause to make such an arrest. The heart of the Fourth Amendment, the argument runs, is a severe requirement of specific justification for any intrusion upon protected personal security, coupled with a highly developed system of judicial controls to enforce upon the agents of the State the commands of the Constitution. * * *

* * * The State has characterized the issue here as “the right of a police officer * * * to make an on-the-street stop, interrogate and pat down for weapons (known in the street vernacular as ‘stop and frisk’).” But this is only partly accurate. For the issue is not the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure. * * * [I]n our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents. A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur.

The exclusionary rule has its limitations, however, as a tool of judicial control. It cannot properly be invoked to exclude the products of legitimate police investigative techniques on the ground that much conduct which is closely similar involves unwarranted intrusions upon constitutional protections. Moreover, in some contexts the rule is ineffective as a deterrent. Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life. Moreover, hostile confrontations are not all of a piece. Some of them begin in a friendly enough manner, only to take a different turn upon the injection of some unexpected element into the conversation. Encounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime. Doubtless some police “field interrogation” conduct violates the Fourth Amendment. But a stern refusal by this Court to condone such activity does not necessarily render it responsive to the exclusionary rule. Regardless of how effective the rule may be where obtaining convictions is an important objective of the police, it is powerless to deter invasions of constitutionally guaranteed rights where the police either have no interest in prosecuting or are willing to forego successful prosecution in the interest of serving some other goal.

Proper adjudication of cases in which the exclusionary rule is invoked demands a constant awareness of these limitations. The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain, will not be stopped by the exclusion of any evidence from any criminal trial. Yet a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. * * *

[W]e turn our attention to the quite narrow question posed by the facts before us: whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest.

* * * It is quite plain that the Fourth Amendment governs "seizures" of the person which do not eventuate in a trip to the station house and prosecution for crime—"arrests" in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a "search." Moreover, it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity."¹³ It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.

* * * We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a "technical arrest" or a "full-blown search."

In this case there can be no question, then, that Officer McFadden "seized" petitioner and subjected him to a "search" when he took hold of him and patted down the outer surfaces of his clothing. We must decide whether at that point it was reasonable for Officer McFadden to have interfered with petitioner's personal security as he did.¹⁶ And in determining whether the seizure and search were "unreasonable" our inquiry is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether "probable cause" existed to justify the search and seizure which took place. However, that is not the case. We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, * * * or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances. * * * But we deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not

¹³ Consider the following apt description:

"[T]he officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet." Priar & Martin, *Searching and Disarming Criminals*, 45 J.Crim.L.C. & P.S. 481 (1954).

¹⁶ We thus decide nothing today concerning the constitutional propriety of an investigative "seizure" upon less than probable cause for purposes of "detention" and/or interrogation. Obviously, not all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred. We cannot tell with any certainty upon this record whether any such "seizure" took place here prior to Officer McFadden's initiation of physical contact for purposes of searching Terry for weapons, and we thus may assume that up to that point no intrusion upon constitutionally protected rights had occurred.

been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.

Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context. In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is necessary "first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," for there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts 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 taken was appropriate?^a * * * Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. * * *

Applying these principles to this case, we consider first the nature and extent of the governmental interests involved. One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the

^a This is not to suggest that the purported "facts" must, with the benefit of hindsight, turn out to have actually existed. As emphasized in *Heien v. North Carolina*, 135 S.Ct. 530 (2015), the Court has long "recognized that searches and seizures based on mistakes of fact can be reasonable." The Court in *Heien* went on to hold: "But reasonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law."

The *Heien* majority did not elaborate upon its holding other than to say (i) that its ruling extended only to mistakes of law that were "objectively reasonable," meaning "the subjective understanding of the particular officer involved" is not controlling; and (ii) that "the inquiry is not as forgiving as the one employed in the distinct context of deciding whether an officer is entitled to qualified immunity for a constitutional or statutory violation," meaning "an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce. Two concurring Justices, whose votes were *not* essential to create a majority, apparently seeking nonetheless to confine the holding, asserted (a) that the government "cannot defend an officer's mistaken legal interpretation on the ground that the officer was unaware of or untrained in the law," (b) that "an officer's reliance on 'an incorrect memo or training program from the police department' makes no difference to the analysis," and (c) that the test is satisfied only when the law at issue is 'so doubtful in construction' that a reasonable judge could agree with the officer's view."

recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest. It was this legitimate investigative function Officer McFadden was discharging when he decided to approach petitioner and his companions. He had observed Terry, Chilton, and Katz go through a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation. There is nothing unusual in two men standing together on a street corner, perhaps waiting for someone. Nor is there anything suspicious about people in such circumstances strolling up and down the street, singly or in pairs. Store windows, moreover, are made to be looked in. But the story is quite different where, as here, two men hover about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace alternately along an identical route, pausing to stare in the same store window roughly 24 times; where each completion of this route is followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a couple of blocks away. It would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.^a

^a This does not mean that a *Terry* stop is never permissible upon suspicion of *past* criminal activity. In *United States v. Hensley*, 469 U.S. 221 (1985), rejecting the lower court's position that *Terry* is limited to ongoing criminal activity, the Court explained:

"The factors in the balance may be somewhat different when a stop to investigate past criminal activity is involved rather than a stop to investigate ongoing criminal conduct. This is because the governmental interest and the nature of the intrusions involved in the two situations may differ. As we noted in *Terry*, one general interest present in the context of ongoing or imminent criminal activity is 'that of effective crime prevention and detection.' A stop to investigate an already completed crime does not necessarily promote the interest of crime prevention as directly as a stop to investigate suspected ongoing criminal activity. Similarly, the exigent circumstances which require a police officer to step in before a crime is committed or completed are not necessarily as pressing long afterwards. Public safety may be less threatened by a suspect in a past crime who now appears to be going about his lawful business than it is by a suspect who is currently in the process of violating the law. Finally, officers making a stop to investigate past crimes may have a wider range of opportunity to choose the time and circumstances of the stop.

"Despite these differences, where police have been unable to locate a person suspected of involvement in a past crime, the ability to briefly stop that person, ask questions, or check identification in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice. Restraining police action until after probable cause is obtained would not only hinder the investigation, but might also enable the suspect to flee in the interim and to remain at large. Particularly in the context of felonies or crimes involving a threat to public safety, it is in the public interest that the crime be solved and the suspect detained as promptly as possible. The law enforcement interests at stake in these circumstances outweigh the individual's interest to be free of a stop and detention that is no more extensive than permissible in the investigation of imminent or ongoing crimes.

"We need not and do not decide today whether *Terry* stops to investigate all past crimes, however serious, are permitted. It is enough to say that, if police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion."

Terry has also been relied upon as a basis for police briefly to seize personal effects upon reasonable suspicion. In *United States v. Place*, 462 U.S. 696 (1983), the Court concluded "that when an officer's observations lead him reasonably to believe that a traveler is carrying luggage

The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.

In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm. * * *

Petitioner * * * does not say that an officer is always unjustified in searching a suspect to discover weapons. Rather, he says it is unreasonable for the policeman to take that step until such time as the situation evolves to a point where there is probable cause to make an arrest. * * *

There are two weaknesses in this line of reasoning however. First, it fails to take account of traditional limitations upon the scope of searches, and thus recognizes no distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons. The former, although justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, is also justified on other grounds, and can therefore involve a relatively extensive exploration of the person. A search for weapons in the absence of probable cause to arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a "full" search, even though it remains a serious intrusion.

that contains narcotics, the principles of *Terry* and its progeny would permit the officer to detain the luggage briefly to investigate the circumstances that aroused his suspicion, provided that the investigative detention is properly limited in scope." But the Court then concluded the seizure in *Place* was unreasonable, given that "we have never approved a seizure of the person for the prolonged 90-minute period involved here," especially since "the violation was exacerbated by the failure of the agents to accurately inform respondent of the place to which they were transporting his luggage, of the length of time he might be dispossessed, and of what arrangements would be made for return of the luggage if the investigation dispelled the suspicion."

A second, and related, objection to petitioner's argument is that it assumes that the law of arrest has already worked out the balance between the particular interests involved here—the neutralization of danger to the policeman in the investigative circumstance and the sanctity of the individual. But this is not so. An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows. The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable intrusion upon the sanctity of the person. It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest. Moreover, a perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for the purpose of prosecuting him for a crime. * * *

Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude 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. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. * * * And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch", but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

We must now examine the conduct of Officer McFadden in this case to determine whether his search and seizure of petitioner were reasonable, both at their inception and as conducted. He had observed Terry, together with Chilton and another man, acting in a manner he took to be preface to a "stick-up." We think on the facts and circumstances Officer McFadden detailed before the trial judge a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. The actions of Terry and Chilton were consistent with McFadden's hypothesis that these men were contemplating a daylight robbery—which, it is reasonable to assume, would be likely to involve the use of weapons—and nothing in their conduct from the time he first noticed them until the time he confronted them and identified himself as a police officer gave him sufficient reason to negate that hypothesis. Although the trio had departed the original scene, there was nothing to indicate abandonment of an intent to commit a robbery at some point. Thus, when Officer McFadden approached the three men gathered before the display window at Zucker's store he had observed enough to make it quite reasonable to fear that they were armed; and nothing in their response to his

hailing them, identifying himself as a police officer, and asking their names served to dispel that reasonable belief. We cannot say his decision at that point to seize Terry and pat his clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation. The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that "limitations upon the fruit to be gathered tend to limit the quest itself." * * * Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation.

[A protective search for weapons,] unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime. The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

The scope of the search in this case presents no serious problem in light of these standards. Officer McFadden patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until he had felt weapons, and then he merely reached for and removed the guns. He never did invade Katz's person beyond the outer surfaces of his clothes, since he discovered nothing in his pat down which might have been a weapon. Officer McFadden confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous; where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries; and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety,

he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons^b in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Affirmed.

JUSTICE HARLAN, concurring.

^b *Michigan v. Long*, 463 U.S. 1032 (1983), extended the self-protective search principle of *Terry* to search of a vehicle. Two deputies saw a car swerve into a ditch and stopped to investigate. Long, the only occupant of the car, met the deputies at the rear of the car, supplied his driver's license upon demand, and started back toward the open door when asked for his vehicle registration. The officers saw a large hunting knife on the floorboard, so Long was frisked and one officer then entered the vehicle and found an open pouch of marijuana under an armrest. The Court concluded "that the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons." In explaining why this was such a case, the Court stated:

"The Michigan Supreme Court appeared to believe that it was not reasonable for the officers to fear that Long could injure them, because he was effectively under their control during the investigative stop and could not get access to any weapons that might have been located in the automobile. This reasoning is mistaken in several respects. During any investigative detention, the suspect is 'in the control' of the officers in the sense that he 'may be briefly detained against his will * * *.' Just as a *Terry* suspect on the street may, despite being under the brief control of a police officer, reach into his clothing and retrieve a weapon, so might a *Terry* suspect in Long's position break away from police control and retrieve a weapon from his automobile. In addition, if the suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to any weapons inside. Or, as here, the suspect may be permitted to reenter the vehicle before the *Terry* investigation is over, and again, may have access to weapons. In any event, we stress that a *Terry* investigation, such as the one that occurred here, involves a police investigation 'at close range,' when the officer remains particularly vulnerable in part *because* a full custodial arrest has not been effected, and the officer must make a 'quick decision as to how to protect himself and others from possible danger * * *.' In such circumstances, we have not required that officers adopt alternative means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter."

Brennan and Marshall, JJ., dissenting, objected: "Putting aside the fact that the search at issue here involved a far more serious intrusion than that 'involved in a *Terry* encounter,' and as such might suggest the need for resort to 'alternate means,' the Court's reasoning is perverse. The Court's argument in essence is that the *absence* of probable cause to arrest compels the conclusion that a broad search, traditionally associated in scope with a search incident to arrest, must be permitted based on reasonable suspicion. But *United States v. Robinson* stated: 'It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-type stop.' In light of *Robinson's* observation, today's holding leaves in grave doubt the question of whether the Court's assessment of the relative dangers posed by given confrontations is based on any principled standard."

Even if the *Long* test for a vehicle search cannot be met, the officer may take other steps in the interest of self-protection. In *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), the Court held that without any showing the particular suspect may be armed, an officer may require a person lawfully stopped to alight from his car in order to diminish "the possibility, otherwise, substantial, that the driver can make unobserved movements." In *Maryland v. Wilson*, 519 U.S. 408 (1997), the *Mimms* rule was held to be equally applicable to passengers; though there has been no reason to detain the passenger, such detention occurs as a practical matter when the vehicle is stopped, and so the minimal added intrusion is justified in the interest of the officer's safety.

* * * The holding has * * * two logical corollaries that I do not think the Court has fully expressed.

In the first place, if the frisk is justified in order to protect the officer during an encounter with a citizen, the officer must first have constitutional grounds to insist on an encounter, to make a *forcible* stop. Any person, including a policeman, is at liberty to avoid a person he considers dangerous. If and when a policeman has a right instead to disarm such a person for his own protection, he must first have a right not to avoid him but to be in his presence. That right must be more than the liberty (again, possessed by every citizen) to address questions to other persons, for ordinarily the person addressed has an equal right to ignore his interrogator and walk away; he certainly need not submit to a frisk for the questioner's protection. I would make it perfectly clear that the right to frisk in this case depends upon the reasonableness of a forcible stop to investigate a suspected crime.

Where such a stop is reasonable, however, the right to frisk must be immediate and automatic if the reason for the stop is, as here, an articulable suspicion of a crime of violence. Just as a full search incident to a lawful arrest requires no additional justification, a limited frisk incident to a lawful stop must often be rapid and routine. There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to ask one question and take the risk that the answer might be a bullet. * * *

JUSTICE WHITE, concurring.

* * * I think an additional word is in order concerning the matter of interrogation during an investigative stop. There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way. However, given the proper circumstances, such as those in this case, it seems to me the person may be briefly detained against his will while pertinent questions are directed to him. Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest, although it may alert the officer to the need for continued observation. * * *

* But in *Hiibel v. Sixth Judicial District*, 542 U.S. 177 (2004), where defendant was convicted of obstructing justice for failing to comply with a statutory requirement that he identify himself during a lawful *Terry* stop, the Court held, 5-4, that defendant's conviction did not violate either the Fourth Amendment or the Fifth Amendment's privilege against self-incrimination. On the Fourth Amendment issue, the majority declared Justice White's statement meant only that "the Fourth Amendment itself cannot require a suspect to answer questions," while the instant case posed the "different issue" of whether state law could impose such a requirement without violating the Fourth Amendment. Using a *Terry*-style balancing of interests, the Court answered the latter question in the affirmative, reasoning that the "request for identity has an immediate relation to the purpose, rationale, and practical demands of a *Terry* stop," that the "threat of criminal sanction helps ensure that the request for identity does not become a legal nullity," and that such threat "does not alter the nature of the stop itself," provided "the request for identification was 'reasonably related in scope to the circumstances which justified' the stop." On the Fifth Amendment issue, the majority held the conviction did not violate the privilege against self-incrimination because "petitioner's refusal to disclose his name was not based on any articulable real and appreciable fear that his name would be used to incriminate him, or that it 'would furnish a link in the chain of evidence needed to prosecute' him." (Both the Fourth and Fifth Amendment holdings in *Hiibel* are limited to the question of "whether a State can compel a suspect to disclose his name during a

JUSTICE DOUGLAS, dissenting.

* * * Had a warrant been sought, a magistrate would, therefore, have been unauthorized to issue one, for he can act only if there is a showing of "probable cause." We hold today that the police have greater authority to make a "seizure" and conduct a "search" than a judge has to authorize such action. We have said precisely the opposite over and over again. * * *

The infringement on personal liberty of any "seizure" of a person can only be "reasonable" under the Fourth Amendment if we require the police to possess "probable cause" before they seize him. Only that line draws a meaningful distinction between an officer's mere inkling and the presence of facts within the officer's personal knowledge which would convince a reasonable man that the person seized has committed, is committing, or is about to commit a particular crime. * * *

FLORIDA V. J. L.

529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000).

JUSTICE GINSBURG delivered the opinion of the Court.

The question presented in this case is whether an anonymous tip that a person is carrying a gun is, without more, sufficient to justify a police officer's stop and frisk of that person. We hold that it is not.

On October 13, 1995, an anonymous caller reported to the Miami-Dade Police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. So far as the record reveals, there is no audio recording of the tip, and nothing is known about the informant. Sometime after the police received the tip—the record does not say how long—two officers were instructed to respond. They arrived at the bus stop about six minutes later and saw three black males "just hanging out [there]." One of the three, respondent J.L., was wearing a plaid shirt. Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct. The officers did not see a firearm, and J.L. made no threatening or otherwise unusual movements. One of the officers approached J.L., told him to put his hands up on the bus stop, frisked him, and seized a gun from J.L.'s pocket. The second officer frisked the other two individuals, against whom no allegations had been made, and found nothing.

J.L., who was at the time of the frisk "10 days shy of his 16th birth[day]," was charged under state law with carrying a concealed firearm without a license and possessing a firearm while under the age of 18. He moved to suppress the gun as

Terry stop," which the state court indicated was the extent of the statutory obligation, although the facts of the case indicate that Hiibel was repeatedly asked "to produce a driver's license or some other form of written identification" but apparently was never asked merely to state his name.) The dissenters concluded there was "no good reason now to reject" a "generation-old statement of law," the "strong dicta" in *Berkemer v. McCarty*, 468 U.S. 420 (1984), that a *Terry* detainee "is not obliged to respond" to questions about identity, especially in light of the Fifth Amendment problem, i.e., that it would not be possible for "a police officer in the midst of a *Terry* stop to distinguish between the majority's ordinary case and the special case" where providing the name would provide the police with "a link in the chain of evidence needed to convict the individual of a separate offense."