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REASONABLE SUSPICION AUTHORIZES DETENTION OF OCCUPANTS OF VALIDLY SEARCHED PREMISES


In *Michigan v. Summers*¹ the United States Supreme Court recognized a new exception to the fourth amendment² probable cause requirement by holding that the detention of an occupant on the premises during the execution of a valid search is constitutionally permissible if based on reasonable suspicion of criminal activity.

Respondent, who was charged with the possession of heroin³ found on his person at the time of arrest,⁴ moved to suppress the heroin as the

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2. 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 person or things to be seized.
   
   U.S. Const. amend. IV.
4. After discovering that respondent was the owner of the premises and finding narcotics in the basement, police arrested respondent and subsequently searched him. The Supreme Court held that respondent's arrest was based on probable cause. 101 S. Ct. at 2594. It is well established that a police officer may fully search the accused in the course of a lawful custodial arrest. See, e.g., Gustafson v. Florida, 414 U.S. 260, 266 (1973) (the right to search flows automatically from a lawful custodial arrest); United States v. Robinson, 414 U.S. 218, 235 (1973) (same); Harris v. United States, 331 U.S. 145, 150 (1947) (search and seizure incident to lawful arrest referred to as "a practice of ancient origin" and "an integral part" of police procedure); Agnello v. United States, 269 U.S. 20, 30 (1925) (the right to "contemporaneously" search a person lawfully arrested "not to be doubted").

In *Chimel v. California*, 395 U.S. 752 (1969), the Court held that it was reasonable for a police officer to search an individual after arresting him "in order to remove any weapons that the latter might seek to use in order to resist or effect his escape," id. at 763, and further, to search for and seize any evidence that might easily be secreted or destroyed. The Supreme Court has held, however, that it is immaterial whether the officer has reason to suspect that the subject is armed or whether the subject is arrested for an offense for which no fruits would exist. See, e.g., Gustafson v. Florida, 414 U.S. 260 (1973) (respondent arrested for failing to have his driver's license in his possession while driving); United States v. Robinson, 414 U.S. 218 (1973) (respondent arrested for operating a motor vehicle after his license was revoked).

Moreover, the search-incident-to-arrest doctrine has been extended beyond the person of the accused to include the area in his immediate possession and control. See, e.g., *Chimel v. California*, 395 U.S. 752 (1969) (search of petitioner's parlor in which arrest was effectuated upheld); *Abel v. United States*, 362 U.S. 217 (1960) (search of petitioner's hotel room upheld); *Harris v. United States*, 331 U.S. 145 (1947) (search of a three-room apartment upheld). See generally 2 W. LaFave, Search and Seizure § 6.3 (1978).
product of an illegal search and seizure. He alleged that the law enforcement officers detained him without probable cause while they executed a valid warrant to search his residence for narcotics. The trial court granted the motion, and both the Michigan Court of Appeals and the Michigan Supreme Court affirmed. On certiorari, the United States Supreme Court reversed and held: A warrant to search particular premises for contraband implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.

The fourth amendment to the United States Constitution protects citizens against "unreasonable searches and seizures" and prohibits

5. See note 16 infra and accompanying text.

6. When police officers arrived at respondent's residence, they confronted respondent on his way out the front door. The officers forced respondent to re-enter his home and remain there for the duration of the search. The Court viewed this fact as having no constitutional significance. 101 S. Ct. at 2595.


8. Id.


11. 101 S. Ct. at 2595.

12. The inclusion of this provision in the Bill of Rights was unquestionably a reaction against both the hated "writs of assistance" in colonial America and the use of the "general warrant" for searches and arrest in common-law England. The writs of assistance gave customs officers the right to conduct discretionary searches to seize goods, wares, and merchandise believed to be smuggled, absent any factual showing based on sworn testimony. The general warrant, which did not have to describe the person or thing to be seized or the place to be searched, was declared illegal in Wilkes v. Wood, 98 Eng. Rep. 489 (C.P. 1763). For a comprehensive discussion see N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution (1937).

13. There is argument as to whether the conjunction "and" used in the fourth amendment was intended to separate the clause prohibiting unreasonable searches and seizures from that setting forth the conditions under which warrants may issue. The initial draft of the amendment, submitted by James Madison, read:

The rights of the people to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched and the persons or things to be seized.

1 Annals of Cong. 452 (Gales & Seaton ed. 1789). The version that was ultimately passed by Congress was similar to Madison's draft, incorporating the unreasonable searches and seizures section and the warrant section into a single, unified clause. However, the chairman of the committee to arrange the passed amendments drafted his own version, containing two seemingly separate and distinct clauses, which was submitted unnoticed to the Senate. The Senate agreed to that version, and it subsequently was immortalized in the Bill of Rights. For a complete account, see J.
the issuance of arrest and search warrants except upon a showing of "probable cause." Enforced through the use of the exclusionary rule, the fourth amendment applies to all seizures of the person, including those involving only brief detentions that do not amount to arrest or search.

A number of Justices have expressed the opinion, based on the legislative history of the fourth amendment, that the warrant clause is paramount and that therefore all searches or seizures must be based upon probable cause. See, e.g., Harris v. United States, 331 U.S. 145, 157-62 (1947) (Frankfurter, J., dissenting); id. at 195, 196 (Jackson, J., dissenting); Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).


Although the Court has consistently held that the fourth amendment applies to the issuance of both search and arrest warrants, an arrest supported by probable cause has never been held unconstitutional "solely because the officers failed to secure a warrant." Gerstein v. Pugh, 420 U.S. 103, 112 (1975). It is generally recognized that a rigid rule requiring review by a magistrate prior to all arrests would be extremely detrimental to effective law enforcement. See Payton v. New York, 445 U.S. 573 (1980); United States v. Santana, 427 U.S. 38 (1976); United States v. Watson, 423 U.S. 411 (1976); Beck v. Ohio, 379 U.S. 89 (1964).

In Brinegar v. United States, 338 U.S. 160 (1949), the Supreme Court explained that "[p]robable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonable trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." Id. at 175-76 (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)). See generally 1 W. LAFAVE, supra note 4, §§ 3.1-3.7.

The exclusionary rule was first introduced in Weeks v. United States, 232 U.S. 383 (1914). In Weeks the Supreme Court held that evidence seized in violation of the fourth amendment's prohibition against unreasonable searches and seizures could not be used in a federal court against the person whose rights had been violated. The rule was extended to the states through the due process clause of the fourteenth amendment in Mapp v. Ohio, 367 U.S. 643 (1963), which held that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." Id. at 655.


Although the fourth amendment never explicitly uses the term "arrest," it not only ensures "the right of people to be secure in their persons . . . ," but it also stipulates that warrants must particularly describe the "persons or things to be seized." U.S. Const. amend. IV (emphasis added).
Historically, the Supreme Court adopted the view that probable cause was a prerequisite to all seizures governed by the fourth amendment, irrespective of the extent of intrusion. In 1968, however, the Court for the first time recognized an exception to this general rule in *Terry v. Ohio.* In *Terry,* the Court found that when the circumstances of a particular case led a police officer reasonably to suspect that "criminal activity was afoot" and that the subject with whom he was dealing was "armed and presently dangerous," the police officer could detain him and subject him to a limited search for weapons even absent probable cause for arrest. The Court stated that although

19. The 1979 edition of Black's Law Dictionary defines an "arrest" as "depriv[ing] a person of his liberty by legal authority." BLACK'S LAW DICTIONARY 100 (5th ed. 1979). The Supreme Court traditionally has accepted this definition. For example, in *Henry v. United States,* 361 U.S. 98 (1959), the majority held that federal agents detaining an automobile whose occupants had engaged in suspicious activity lacked probable cause to arrest, and then stated that "[w]hen the officers interrupted the two men and restricted their liberty of movement, the arrest . . . was complete." *Id.* at 103.


21. The phrase "reasonable suspicion," referring to that quantum of evidence necessary to carry out a stop and frisk, is commonly associated with *Terry.* The phrase was not first expressly used, however, until Justice Harlan wrote in his concurring opinion in *Sibron v. New York,* 392 U.S. 40 (1968), that "[u]nder the decision in *Terry* a right to stop may indeed be premised on reasonable suspicion and does not require probable cause . . . ." *Id.* at 71 (Harlan, J., concurring).


23. The Court emphasized the restricted nature of a permissible search, stating that an officer may conduct a "carefully limited search" only of the "outer clothing" of a suspect in an attempt to disclose weapons. *Id.* at 30.

24. *Id.* at 27. The Court concluded that because such a search is reasonable under the fourth amendment, "any weapons seized may properly be introduced in evidence against the person from whom they were taken." *Id.* at 31.

Prior to *Terry,* state and lower federal courts and some state legislatures had established fairly well the right of a policeman to stop an individual for interrogation upon less than probable cause. The courts placed differing limitations on the constitutionality of such conduct depending on the circumstances of each case. See, e.g., *Keingham v. United States,* 307 F.2d 632 (D.C. Cir. 1962)
a momentary, on-the-street detention accompanied by a frisk for weapons constituted a fourth amendment seizure, the detention was substantially less intrusive than a traditional arrest. The Court held that the reasonableness of a Terry-type detention should be determined by balancing the invasion of a citizen's personal security against the governmental interest in preventing crime and in protecting police officers rather than by the traditional, and more rigid, probable cause


In 1964, New York enacted § 180-a of the New York Code of Criminal Procedure, patterned largely after the Uniform Arrest Act and employing the reasonable suspicion standard as a means of evaluating both the stop and the frisk stages of police investigation. N.Y. CODE CRIM. PROC. § 180-a (McKinney Supp. 1967).

Finally, in 1966, the American Law Institute incorporated into its Model Code of Pre-Arraignment Procedure a section dealing with the constitutional validity of a stop and frisk without probable cause to arrest. ALI, MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 2.02(5) (Tent. Draft No. 1, 1966). See ALI, MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 110.2 (1975).

25. During the early 1960s, this common police practice came to be referred to euphemistically as "stop and frisk" and was a popular subject of many commentators. See Abrams, Constitutio nal Limitations on Detention for Investigation, 52 IOWA L. REV. 1093 (1967); LaFave, Detention for Investigation by the Police: An Analysis of Current Practice, 1962 WASH. U.L.Q. 331; Schwartz, Stop and Frisk, 58 J. CRIM. L.C. & P.S. 433 (1967). The Supreme Court, however, did not confront the issue until Terry v. Ohio, 392 U.S. 1 (1968). See note 20 supra and accompanying text.

26. The Supreme Court determined that, "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Terry v. Ohio, 392 U.S. at 16. 27. Id. at 26-27.

28. The Court stated that the "central inquiry" under the fourth amendment is "the reasonableness in all the circumstances of the particular governmental invasion." Id. at 19.

29. The Court argued that the police officer must be able to defend his conduct with "specific and articulable facts" that would reasonably have warranted the intrusion on the individual's privacy. Id. at 21.

30. The Court cited various statistics revealing the high risks of armed violence confronting police officers in the line of duty. Id. at 24 n.21. The majority asserted that the governmental interest in investigating crime was secondary to the more immediate concern of the police in taking precautionary measures to insure that the subject under suspicion "is not armed with a weapon that could unexpectedly and fatally be used against him." Id. at 23.
Initially, the Supreme Court applied the *Terry* standard solely to cases involving traditional stop and frisk circumstances. The Court adopted a piecemeal approach, evaluating the fourth amendment issue according to the particular circumstances of each case. In these early cases, the Court continued to utilize the balancing approach introduced in *Terry*, weighing the necessity to seize and search against the degree of state intrusion into individual privacy. Although these cases served to clarify and refine the *Terry* doctrine, the Court consistently maintained the narrowness of the *Terry* holding by recognizing the constitutional propriety of seizures based upon less than probable cause only in those cases in which both reasonable suspicion of criminal activity and a serious threat to the officer's safety existed.

In *Pennsylvania v. Mimms*, however, the Supreme Court extended *Terry*’s limited scope by holding that a routine policy of ordering out of their vehicles all drivers stopped for traffic violations was constitutionally permissible despite the absence of reasonable suspicion of criminal activity and a belief that the subject was armed and dangerous. In *Mimms*, reasonable suspicion arose only after defendant, at

31. *Id.* at 20-27. The concept of determining the reasonableness of an intrusion by balancing the governmental interest against the invasion of the individual's privacy was first used in *Camara v. Municipal Court*, 37 U.S. 523, 534-35 (1967).

32. *See* *Adams v. Williams*, 407 U.S. 143 (1972). This was also the approach taken by the lower federal courts. *See, e.g.*, United States v. Unverzagt, 424 F.2d 396 (8th Cir. 1970); Carpenter v. Sigler, 419 F.2d 169 (8th Cir. 1969).

33. *E.g.*, *Adams v. Williams*, 407 U.S. 143 (1972). In this case the officer's reasonable suspicion of criminal activity was derived from an informant's tip that the subject was carrying narcotics and a gun. The officer approached the automobile in which the subject was seated and immediately seized the weapon. The *Adams* Court held that under the circumstances, including the subject's initial refusal to get out of the car, the officer's conduct constituted "a limited intrusion designed to insure his safety" and was therefore reasonable. *Id.* at 148. It was irrelevant that the officer's reasonable suspicion was based on an informant's tip rather than personal observation, as long as the informant displayed some "indicia of reliability." *Id.* at 147.

34. *See* notes 32-33 *supra* and accompanying text.

35. The *Terry* Court held specifically that a police officer can conduct a limited search for weapons only when he reasonably believes that his safety is threatened. 392 U.S. at 27. Moreover, in a footnote, the Court emphasized that its decision did not attempt to delineate the outer limits of the new reasonable suspicion standard: "[W]e . . . decide nothing today concerning the constitutional propriety of an investigative 'seizure' upon less than probable cause for purposes of 'detention' and/or interrogation." *Id.* at 19 n.16.


38. *See* note 35 *supra*.

39. 434 U.S. at 111-12. Two years later, however, in *Brown v. Texas*, 443 U.S. 47 (1979), the
the request of a police officer, had stepped out of his automobile. The officer then observed a large bulge under defendant's jacket. The loaded revolver that was subsequently discovered was suppressed by the Pennsylvania Supreme Court, but the United States Supreme Court reversed. In reaching its decision, the *Mimms* Court balanced the interests in police safety against the intrusion into the driver's personal liberty, concluding that once the vehicle had been lawfully detained, the additional intrusion was "de minimus."

In *United States v. Brignoni-Ponce* the Supreme Court recognized for the first time an exception to the probable cause requirement in a situation not involving limited weapons search. The Court concluded that the fourth amendment permitted a roving border patrol to detain briefly a vehicle near the Mexican border on the reasonable suspicion that the automobile was carrying illegal aliens. The Court again invoked the *Terry* balancing test, this time weighing the public interest in preventing illegal entry into the United States against the severity of the interference with individual liberty. Similarly, in *United States
v. Martinez-Fuere; the Court used the Terry reasoning to hold that police could stop vehicles at permanent checkpoints and briefly question the occupants even in the absence of any reasonable suspicion that those vehicles contained illegal aliens.

In other cases, the Supreme Court has balanced the Terry scales in favor of the individual. In Delaware v. Prouse, for example, the Court held that a state policy of arbitrarily detaining automobiles in order to check license and registration information, without any reason to suspect illegal activity, violated the fourth amendment. The Court declared that this type of intrusion could not be justified by the state's interest in promoting highway safety. In Davis v. Mississippi, the Court held that in the absence of probable cause for arrest, the fourth amendment would not permit the detention of suspects at police headquarters for fingerprinting and interrogation.

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53. Id. at 559. The Court recognized that the governmental interest in performing routine checkpoint stops is immense, whereas the consequent intrusion on the individual is limited. Id. at 557.

The Court, however, has never permitted an intrusion beyond questioning of occupants of vehicles at border stops absent probable cause. See United States v. Ortiz, 422 U.S. 891 (1975) (warrantless vehicle searches by border patrol officers at fixed checkpoints absent consent or probable cause held violative of fourth amendment); Almeida-Sanchez v. United States, 413 U.S. 266 (1973) (same). See generally 3 W. LaFave, supra note 4, § 10.5.

55. Id. at 663. The Court cited United States v. Martinez-Fuerte, 428 U.S. 543 (1976), and United States v. Brignoni-Ponce, 422 U.S. 873 (1975), in finding that the stop of an automobile and the detention of its occupants constitutes a fourth amendment seizure. 440 U.S. 653. The Court declared that such a detention to check license and registration information would be permissible, however, if based on "articulable grounds" and a "reasonable suspicion" that the driver did not have a license or that the automobile was unregistered. Id. at 656.

56. 440 U.S. at 658-59. The Court agreed with the petitioner that the states have a vital interest in highway safety, but concluded that a system of random spot checks would have only an incremental contribution toward this interest. Id. at 659.

58. Id. at 726-27. The Court held that the fingerprints obtained pursuant to this detention were inadmissible as fruits of an unlawful seizure. Id. at 723. The Court indicted in dictum, however, that a station house detention for the sole purpose of obtaining fingerprints might, "under narrowly defined circumstances," be considered reasonable under the fourth amendment, even in the absence of probable cause. Id. at 727.

Other types of investigative detentions not supported by probable cause have withstood scrutiny under the fourth amendment. See, e.g., United States v. Dionisio, 410 U.S. 1 (1973) (grand jury subpoenas summoning 20 persons to the United States Attorney's Office, where they were requested to make voice recordings, upheld on the basis that a grand jury subpoena is not a fourth amendment seizure); Wise v. Murphy, 275 A.2d 205 (D.C. 1971) (court-ordered line-up without probable cause for arrest held permissible in a rape investigation). But see Beightol v. Kunowski,
In *Dunaway v. New York* the Supreme Court again refused to extend the *Terry* doctrine to the context of custodial interrogations. In *Dunaway*, police officers had reasonable suspicion, not amounting to probable cause, to believe that the petitioner was connected with an attempted robbery and homicide. The petitioner was taken into custody and interrogated, whereupon he made statements and drew sketches that were used against him at his trial. The state appellate court upheld the admissibility of the evidence, but the Supreme Court reversed, arguing that the intrusion involved in *Dunaway* was largely indistinguishable from a traditional arrest and that any exception created to justify such detentions "would threaten to swallow the general rule that Fourth Amendment seizures are 'reasonable' only if based on probable cause."
In *Michigan v. Summers* the Court determined that the weight of the competing interests was on the side of the state when it applied the *Terry* balancing test to the special context of detentions incident to the execution of valid search warrants. Writing for the majority, Justice

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Stevens found that the detention did not violate respondent's fourth amendment right "to be secure against an unreasonable seizure of his person." Conceding that respondent's detention constituted a fourth amendment "seizure" unsupported by probable cause, the Court concluded that this seizure was nevertheless reasonable. The Court cited Terry and its progeny for the proposition that some detentions, although subject to the fourth amendment, are sufficiently less intrusive than traditional arrests and are supported by such substantial law enforcement interests as to be valid if based upon reasonable suspicion rather than upon probable cause. The majority distinguished Dunaway as involving a detention of much greater severity.

In justifying detentions based upon reasonable suspicion during proper searches, the Court balanced the government intrusion against

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69. Justice Stevens was joined by Chief Justice Burger and Justices White, Blackmun, Powell, and Rehnquist. Justice Stewart, joined by Justices Brennan and Marshall, dissented.

70. 101 S. Ct. at 2589-90. The Court found it unnecessary to decide whether a search warrant authorizes police to search the occupants of a premises, because the eventual search of respondent was incident to his arrest. Id. at 2590. Therefore, Ybarra v. Illinois, 444 U.S. 85 (1979), relied on by the respondent, was not applicable. Ybarra dealt solely with the issue of whether police executing a search warrant in a public tavern could search all of the customers present. Without considering the validity of the detention of the petitioner, the Court held that a warrant authorizing search of a premises does not automatically authorize a search of all persons thereon and, further, that the search of petitioner was invalid for lack of probable cause. Id. at 90-96.


71. 101 S. Ct. at 2590 & n.5. In support of this proposition, the Court cited Terry v. Ohio, 392 U.S. 1 (1968).

72. 101 S. Ct. at 2590. The Court noted that its decision was based on an assumption of the existence of probable cause to arrest. Id. at 2590 & n.3.

73. Id. at 2595.


75. 101 S. Ct. at 2592. The Court stated that police must have an "articulable basis for suspecting criminal activity." Id.


77. 101 S. Ct. at 2593-94.

78. Id. at 2593.
the public interest in effective law enforcement. The Court reasoned that because a neutral and detached magistrate, in issuing a valid search warrant, had already approved a substantial invasion of the respondent's privacy, the added intrusion resulting from his detainment was inconsequential. Moreover, the detention of the respondent at his own residence involved neither the indignity associated with an on-the-street detention nor the inconvenience of a trip to the police station. The Court further observed that the public interest in minimizing the risk of harm to officers, preventing the escape of criminal suspects, and facilitating the orderly completion of searches clearly outweighed the minimal intrusion imposed upon the person detained.

In conclusion, the majority noted that the requisite element of reasonable suspicion could be implied from the existence of a search warrant, because a judicial officer had previously found probable cause to believe that the law was being violated on the premises to be searched.

Justice Stewart, joined in dissent by Justices Brennan and Marshall, argued that the Court should not uphold a detention based on less than probable cause unless the government could justify the detention with a purpose beyond the ordinary police interest in effective criminal investigation. The dissent argued that the petitioner in Sum-
mers failed to present such an extraordinary interest. In addition, the dissent distinguished the Terry and Brignoni-Ponce lines of cases as involving only momentary detentions, whereas the type of seizure upheld in Summers potentially could last for several hours. The dissent concluded that the Summers facts provided no occasion for a departure from the traditional standard of probable cause usually applied in fourth amendment cases.

Although the Court's opinion in Terry v. Ohio initially appeared conservative and hesitant, subsequent decisions invoking the Terry precedent have been increasingly broad and decisive. It has become clear that in sanctioning a single exception to the probable cause requirement, the Terry decision precipitated a definite shift from traditional fourth amendment standards. The holding in Michigan v. Summers indicates that the Supreme Court has not yet completed its expansion of Terry.

The detention validated in Summers constituted a permissible seizure within the meaning of the fourth amendment. The officers had reasonable suspicion that the respondent was engaging in criminal activity. The detention presumably was of limited duration and did not entail transporting the respondent to a different location. Moreover, any interrogation was limited to a few brief questions to ascertain general information. The officers had secured a warrant founded upon probable cause that criminal activity was taking place at the residence of the respondent. Having ascertained that the respondent was the owner, the police officers were reasonable in believing that he might be a participant in the illegal activity.

90. Id. at 2597.
91. Id. at 2599. See notes 28-31 supra and accompanying text.
92. Id.
93. See note 35 supra and accompanying text.
95. See notes 16-19 supra and accompanying text.
96. The officers had secured a warrant founded upon probable cause that criminal activity was taking place at the residence of the respondent. 101 S. Ct. at 2593. Having ascertained that the respondent was the owner, the police officers were reasonable in believing that he might be a participant in the illegal activity. Id. at 2589-90.
97. Id. at 2593.
98. Id.
99. Id.
secure a dangerous weapon while the search was being conducted.\textsuperscript{101}

The Court's continued reliance on the balancing test to determine reasonableness, however, encourages inconsistent results. Law enforcement officers, having no workable set of guidelines, are forced to balance competing public and individual interests on an ad hoc, case-by-case basis. The Court in \textit{Dunaway v. New York}\textsuperscript{102} correctly pointed out that officers possess neither the time nor the expertise necessary to perform such a task.\textsuperscript{103} More importantly, there exists enormous potential for abuse or discretion by an overzealous police officer.

The balancing standard also precipitates incongruous decisionmaking by the Supreme Court. An illustration of the incongruity is the contrast of the decisions in \textit{Terry v. Ohio}\textsuperscript{104} and \textit{United States v. Brignoni-Ponce},\textsuperscript{105} in which great emphasis was placed on the necessity of an overwhelming and unique governmental concern,\textsuperscript{106} with that in \textit{Michigan v. Summers}, in which general public interest in efficient law enforcement was sufficient to sustain the intrusion.\textsuperscript{107} In addition, uniform application by state and lower federal courts is entirely impracticable.

The dissent's concern that the \textit{Michigan v. Summers} holding may lead to detentions of unreasonable duration\textsuperscript{108} is unwarranted. Case law offers indirect safeguards against this possibility. It is a well-established principle that law enforcement officers may remain on the premises to be searched only for the time reasonably necessary to execute a warrant.\textsuperscript{109} The \textit{Summers} Court specifically held that the occupants of the premises could be detained only while a "proper search is conducted."\textsuperscript{110} Moreover, some states have enacted legislation patterned

\textsuperscript{101} See note 84 \textit{supra} and accompanying text.

\textsuperscript{102} 442 U.S. 200 (1979).

\textsuperscript{103} The \textit{Dunaway} Court expressed the fear that "the protections intended by the Framers could all too easily disappear in the consideration and balancing of the multifarious circumstances presented by different cases, especially when that balancing may be done in the first instance by police officers engaged in the 'often competitive enterprise of ferreting out crime.'" \textit{Id.} at 213 (quoting \textit{Johnson v. United States}, 333 U.S. 10, 14 (1948)).

\textsuperscript{104} 392 U.S. 1 (1968).

\textsuperscript{105} 422 U.S. 873 (1975).

\textsuperscript{106} See notes 30 & 50 \textit{supra} and accompanying text.

\textsuperscript{107} 101 S. Ct. at 2593-94.

\textsuperscript{108} \textit{Id.} at 2598.


\textsuperscript{110} 101 S. Ct. at 2595.
after Uniform Arrest Act or ALI Model Code of Pre-Arraignment Procedures provisions. The Uniform Act proposes a limit of two hours for detentions based on reasonable suspicion but for which probable cause is lacking;\(^{111}\) the Model Code suggests that such seizures should not extend beyond twenty minutes.\(^{112}\)

The Supreme Court should abandon the balancing test in favor of concise and workable guidelines for determining the constitutional propriety of detentions unsupported by probable cause. Continued application of the balancing test will accelerate the erosion of the personal safeguards established by the fourth amendment.

\(D.J.K.\)

\(^{111}\) INTERSTATE COMMISSION ON CRIME, supra note 24.

\(^{112}\) ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 110.2(1) (1975).