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Has the Pennsylvania Superior Court Misread *Terry & Adams*?

**Robert Berkley Harper**

I. INTRODUCTION

Governmental intrusion into individual freedom and privacy encompasses a wide spectrum of activity. Perhaps the most conspicuous intrusions are encounters between law enforcement officers and citizens. These encounters range from friendly conversation or minor instruction, such as a casual request that an individual pause and answer questions, to arrest, intensive interrogation, and search and seizure of property. The permissible

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1. "It is commonly believed that policemen spend most of their time tracking down criminals. This, however, is a misconception. The police function which is least obvious to the public (although it is the most visible), is that of crime prevention, which absorbs most of the typical patrolman's day. He is on duty primarily not to solve crimes (this is largely the task of specialized investigative policemen, such as detectives), but to intimidate potential criminals. His mere presence will often be sufficient to accomplish the purpose; when it is not, and he notices a person whose behavior gives ground for suspicion that criminal activity may be afoot, the careful officer will investigate. He will, at least, keep an eye on the suspicious person, and perhaps follow him" Landynski, *The Supreme Court's Search For Fourth Amendment Standards: The Problem of Stop-And-Frisk*, 45 CONN B.J. 146, 147-48 (1971).

2. With regard to observations that the policy may initiate "mere conversation" without any evidentiary basis for suspicion, consider the following:

   Of course any individual has a right to approach any other individual . . . . But it is not quite the same when the police stop someone. There is authority in the approach of the police, and command in their tone. I can ignore the ordinary person, but can I ignore the police? Reich, *Police Questioning of Law Abiding Citizens*, 75 YALE L.J. 1161, 1162 (1966). Another author observed that:

   Although some courts have equated police questioning with the exercise of the ordinary citizen's rights to ask questions of others, police inquiries within the scope of the criminal law enforcement function should not be considered in such a simplistic manner because of the possibility of future intrusion and the citizen's lack of choice in deciding whether to respond. Comment, *The Gradation of Fourth Amendment Doctrine in the Context of Street Detentions: People v. DeBour*, 38 OHIO ST. L.J. 409, 427 (1977).
scope of these encounters is determined by the Supreme Court and other courts of the United States through a case-by-case interpretation of the fourth amendment. The guidelines thus established are sometimes less than clear from the point of view of lesser courts, which must enforce the judicial rulings, and particularly from the point of view of police officers, who must live according to them, giving rise to confusion and sometimes departures from the premise of the fourth amendment.3

Some fifteen years have elapsed since the United States Supreme Court rendered its decision in Terry v. Ohio.4 In Terry the Court approved the long-standing police practice of “stop and frisk”, wherein suspects are stopped for interrogation and sometimes searched for a weapon on less than probable cause.5 Although Terry and its companion cases provide some guidance about when a police officer may physically intrude into one’s privacy, many questions relating to police-citizen encounters remain unanswered.7

3. Any major intrusion of a citizen would come within the protection of the fourth amendment which 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 Warrant 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. The fourth amendment was designed to protect both innocent and guilty persons “from unreasonable intrusions upon their right of privacy while leaving adequate room for the necessary processes of law enforcement.” Trupiano v. United States, 334 U.S. 699, 709 (1948).


5. See Terry v. Ohio, 392 U.S. at 27. The practice of frisking was recognized at common law, and was an established practice well before Terry. See L. Tiffany, D. McIntyre & D. Rotenburg, DETECTION OF CRIME 45-48 (1967); Frang, Stop and Frisk: The Issue Unresolved, 49 J. Urb. L. 733, 740-42 (1972); Stern, Stop and Frisk: An Historical Answer to a Modern Problem, 58 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 532 (1967).

6. Sibron v. New York and Peters v. New York, reported together at 392 U.S. 49 (1968), were decided by the Supreme Court the same day as Terry. For a discussion of all three cases, as well as the Court’s opinion, see LaFave, “Street Encounters” and the Constitution: Terry, Sibron, Peters, and Beyond, 67 MICH. L. REV. 39, 47-50 (1968).

7. “Among the unresolved questions were: whether facts not amounting to probable cause could justify an ‘investigatory seizure’ or ‘forcible stop’ short of an arrest; what behavior by the police officer transforms a forcible stop into an arrest requiring probable cause to effectuate it; and perhaps most important, whether the constitutional standard for a forcible stop is different, and if so in what respect, than the standard for a stop-and-frisk.” Caracappa, Terry v. Ohio and the Power of Police to Accost Citizens Absent Probable Cause to Arrest: A
Recent decisions of the Pennsylvania Superior Court have approved police actions that arguably impinge on citizens' fourth amendment rights and freedoms. The device by which the court has approved this extended authority is apparently an expansive reading of the Supreme Court's decision in *Adams v. Williams*. The superior court's interpretation of *Adams* has effected a new exception to the fourth amendment and has granted law enforcement officers in Pennsylvania powers greater than those of police officers in any other jurisdiction in the United States.

The purpose of this article is to identify the serious erosion of fourth amendment rights resulting from recent holdings of the Superior Court of Pennsylvania. It begins with a discussion tracing the development of *Terry* and *Adams* at both the state and federal levels. This is followed by an examination of several cases in which the superior court has expanded the rationale of *Terry* and *Adams* to grant law enforcement officers extended authority. The change in fourth amendment rights brought about by these decisions is then discussed, and the article concludes with recommendations for this area of Pennsylvania criminal justice.

II. HISTORICAL BACKGROUND RELATING TO STREET ENCOUNTERS

A. Probable Cause and Other Requirements

Every person has a fundamental interest in limiting those circumstances under which the sanctity of his person and personal effects may be disturbed by governmental intrusion. The fourth amendment to the United States Constitution was adopted to in-

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The questions of forcible stop and frisks will not be discussed in this article. For a discussion of this area, see; Bogomolny, Street Patrol: The Decision to Stop a Citizen, 12 CRIM. L. BAL. 544 (1976); Caracappa, supra; Miles, From Terry to Mimms: the Unacknowledged Erosion of Fourth Amendment Protections Surrounding Police-Citizen Confrontations, 16 AM. CRIM. L. REV. 127 (1978); Oberly, The Policemen's Duty and the Law Pertaining to Citizen Encounters, 8 PEPPERDINE L. REV. 653 (1981); Frang, supra; Comment, In re H.B.: An Unfortunate Expansion of the Power to Stop and Frisk, 32 RUTGERS L. REV. 118 (1979); Note, People v. DeBour: The Power of Police to Stop and Frisk Citizens, 30 SYRACUSE L. REV. 893 (1979).

8. 407 U.S. 143 (1972). For a thorough analysis of the Adams decision, see


sulate persons, both innocent and guilty, from unreasonable and unwarranted instrusions by the government into their personal privacy. The Supreme Court has determined that the fourth amendment is applicable to state governments as well as to the federal government through operation of the due process clause of the fourteenth amendment.

Situations arise, however, where the government's interest in violating a person's privacy outweighs that person's constitutional right to remain undisturbed. Such situations are manifested by the issuance of a warrant for search or for seizure in accordance with the constitutional standard of probable cause. Searches undertaken without leave of warrant are presumptively unreasonable, except in those limited circumstances where incident to a lawful arrest or where undertaken to prevent the destruction of evidence. Searches conducted pursuant to the valid consent of the person searched are not within the scope of the fourth amendment. The fourth amendment requires that a "neutral and detached magistrate" issue the warrant, thereby insuring judicial rather than police control over the process.

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11. See supra note 3.
13. Courts have determined that crime prevention and police safety are public necessities that may warrant an infringement of individual privacy. See Terry v. Ohio, 392 U.S. at 24; Johnson v. United States, 333 U.S. 10, 14 (1948) (right to privacy must yield to societal concern from crime prevention).
15. See supra note 14.
17. In warrantless searches made incident to arrest, the police may search both for weapons and to "seize any evidence on the arrestee's person in order to prevent its concealment or destruction." Id. at 763.
19. In Shadwick v. City of Tampa, 407 U.S. 345 (1972), the Court stated that a magistrate authorized to issue warrants is required to satisfy two tests. "He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search." Id. at 350.
The standard of probable cause must be satisfied as a prerequisite to every search that is conducted without the consent of the person searched. It represents a balance between the individual’s right to be free from unreasonable interference with his privacy and the state’s duty to control crime. Probable cause has been variously defined, but it usually exists if, at the moment of arrest or search, the facts and circumstances within the officer’s knowledge and of which he has reasonably trustworthy information are sufficient to warrant a prudent man in believing that the suspect has committed a crime or that evidence of a crime is located at the place to be searched. The probable cause rule is a practical, nontechnical concept affording the best method for accommodating the interests of both the individual and the state.

Adherence to the requirements of probable cause and a warrant is encouraged by the exclusionary rule, which is a rule of evidence adopted by the Supreme Court whereby evidence obtained in contravention of the fourth amendment is inadmissible against the person whose rights have been violated. The purpose of the exclusionary rule is to protect persons from unreasonable searches and seizures conducted under the guise of law. Recognizing that constitutional rights are not self-enforcing, the Court implemented the exclusionary rule to compel respect for the fourth

23. The exclusionary rule was established in Weeks v. United States, 232 U.S. 383 (1914), where the Court held that evidence seized in violation of the fourth amendment was illegally obtained and was therefore inadmissible in federal court. Id. at 398. See Elkins v. United States, 364 U.S. 206 (1960) (exclusionary rule applied to search by state officers).


24. In describing the importance of the exclusionary rule in Terry, the Supreme Court stated that "experience has taught that it is the only effective deterrent to police misconduct in the criminal context, and that without it the constitutional guarantees against unreasonable searches and seizures would be a mere 'form of words.'" Terry v. Ohio, 392 U.S. 1, 12 (1968).
amendment and other rights of citizens by removing the incentive to disregard them.

**B. Stop and Frisk**

Prior to 1968, the requirement of probable cause was the minimum standard by which police officers could seize a person. But there always have been situations within the scope of a police officer’s duties that demand swift action predicated upon on-the-spot observations by the patrolling officer. Historically, these actions have not been, and as a practical matter could not be, subject to the warrant procedure. “Stop and frisk” refers to the time-honored police procedure of stopping suspicious persons for questioning on less than probable cause to arrest and, when necessary, searching them for dangerous weapons. As of 1968, few courts or legislatures had approved the practice, but neither had they disapproved it. To give credibility to the practice, several states, including New York, adopted statutes providing for police actions based on less than probable cause, whereby an officer could briefly stop a citizen and investigate for weapons.

The practice of stop and frisk was first addressed by the United States Supreme Court in 1968 in the landmark Terry-Sibron-Peters trilogy. In *Terry v. Ohio* the Court validated the

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26. *LAFAVE*, *supra* note 6, at 40-47.


28. In 1964, the State of New York adopted a statute entitled “Temporary questioning of persons in public places; search for weapons.” N.Y. CRIM. PROC. LAW § 140.50 (McKinney 1973). The New York statutory procedure was immediately dubbed “stop and frisk.” Several states in addition to New York enacted stop and frisk statutes prior to *Terry*. See, e.g., DEL. CODE ANN. tit. 11, § 1902 (1953); MASS. ANN. LAWS ch. 41, § 98 (Michie/Law Coop 1966).

29. 392 U.S. 1 (1968). Although the *Terry* trilogy represents the first instance where the United States Supreme Court expressly determined the validity of temporary detention based on less than probable cause, the issue arose in an earlier decision. See *Brinegar v. United States*, 338 U.S. 160, 178-79 (1949) (Burton, J., concurring). The Court had originally agreed to hear a fourth case which involved the question of the legality of a stop alone, apart from a frisk, on less than probable cause to arrest, but dismissed the writ of certiorari
investigative tool of stop and frisk, permitting the limited search of an individual for weapons despite a lack of probable cause.\textsuperscript{30} The Court made it clear that a stop and frisk is a search within the meaning of the fourth amendment,\textsuperscript{31} but nevertheless sanctioned its use on less than probable cause. The standard enunciated by the Court was the reasonableness of the action under the totality of the circumstances; the officer must be able to point to specific and articulable facts from which he concluded, and more importantly, from which a reasonable man would have concluded, that the intrusion was warranted.\textsuperscript{32}

The \textit{Terry} Court applied a balancing test to determine the reasonableness of the governmental actions, balancing governmental interests in crime detection and officer safety against the individual's right to personal security and freedom from arbitrary governmental interference. The Court concluded that "there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer" in spite of the absence of probable cause.\textsuperscript{33} Hence, it appears that reasonableness has replaced probable cause as the standard required to justify an intrusion where that intrusion qualifies as a stop and frisk.\textsuperscript{34}

\begin{itemize}
\item as improvidently granted. Wainwright v. City of New Orleans, 392 U.S. 598 (1968) (per curiam).
\item 30. 392 U.S. at 26-28. In its formal sense a frisk involves contact or patting of the outer clothing of a person to detect by sense of touch whether a concealed weapon is being carried. If, during the course of a justifiable stop, the officer reasonably fears for his own, or another's, safety he may conduct a limited pat-down of the detained person's outer clothing to discover and remove weapons. \textit{Id.}
\item 31. 392 U.S. at 16.
\item 32. \textit{Id.} at 30-31. The Court stated:
\begin{quote}
[W]here 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 in an attempt to discover weapons which might be used to assault him.
\end{quote}
\textit{Id.}
\item 33. 392 U.S. at 30.
\item 34. Although never expressly used by the \textit{Terry} majority, "reasonable suspicion" became the term associated with the quantum of evidence that the
At the time *Terry* was decided the Supreme Court ruled on two other cases involving encounters between persons and police officers. In *Sibron v. New York*, the Court demonstrated the boundaries of the *Terry* holding by finding a police officer's stop and frisk to be unreasonable. The police officer in *Sibron* observed a suspect speaking with several known narcotics addicts. Later, the officer approached the suspect in a restaurant and asked him to step outside, where the officer said, “You know what I am after.” At that point, according to the officer, Sibron “mumbled something and reached into his pocket.” Simultaneously, the officer reached into the same pocket and pulled out several packets of heroin. The Court held that the search was unlawful because the officer was seeking narcotics rather than acting out of fear for his safety, and because, in any event, the officer had not followed the necessary procedure for a frisk for weapons.

*Peters v. New York*, similarly dealt with the scope of the *Terry* opinion. In *Peters* the officer made a reasonable, probable cause stop and patted down the suspect in a search for weapons. Feeling a hard object in the suspect's pocket that he thought might be a gun, the officer reached in and removed an opaque plastic envelope that contained burglar's tools. The Court concluded that there was no reason to consider the officer's right to stop and frisk because he had made an arrest on probable cause and thus could search the suspect in order to find weapons and prevent the destruction of evidence.

*Adams v. Williams* is the most recent stop and frisk decision Court found necessary to conduct a stop and frisk. The term “reasonable suspicion” was first used by Justice Harlan in his concurring opinion in *Sibron v. New York*, 392 U.S. 40 (1968). He wrote: “Under 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). See Landynski, supra note 1, at 181 n.115.

36. *Id.* at 45.
37. *Id.* at 65.
39. *Id.* at 65.
40. *Id.* at 66. Each of the cases of this trilogy—*Sibron, Terry* and *Peters*—involved a different quantitative amount of evidence. In *Sibron*, the officer had no significant evidence with which to justify an intrusion; in *Terry*, there existed suspicious circumstances, though not probable cause, giving rise to an intermediate level of intrusion; in *Peters*, there existed probable cause, justifying a full search.
of the United States Supreme Court. In that case the Court reversed a decision of the court of appeals and upheld the validity of a stop and frisk prompted by an unverified tip alleging that a man in a nearby parked car possessed narcotics and carried a gun at his waist. The Court ruled that under the Terry doctrine the tip was sufficiently reliable to justify the officer's actions. However, the Court qualified its approval of the use of an informant's tip to initiate a stop and frisk by carefully noting that (1) the informant was personally known to the officer and had provided reliable tips in the past; (2) the officer was alone late at night in a high crime area; and (3) under applicable state law, the informant was subject to immediate arrest for making a false report if the officer's stop and frisk proved the tip to be false.

The majority in Adams ruled that the search was a proper frisk for the safety of the police officer, placing great emphasis on the facts of the case. The Court noted that when the officer ordered the defendant to step out of the car, the defendant did not comply, but instead rolled down his car window. Thus, the gun reported to be at the defendant's waist became a greater threat to the officer. Hence, the officer's action in reaching to the spot where the gun was reportedly hidden constituted a limited intrusion designed to insure the officer's safety.

Taken as a whole, the Court's stop and frisk decisions do not stand for the proposition that a seizure is justified based on the reasonable suspicion of any criminal activity. There must be a reasonable suspicion of criminal activity and a reasonable suspicion that the person being investigated is armed and dangerous, and thereby poses a threat to the immediate safety of the officer or some other individual. The reasonableness of an officer's suspicion is determined by an objective standard of whether the in-

42. Williams v. Adams, 441 F.2d 394 (2d Cir. 1971) (en banc).
43. 407 U.S. at 149.
44. Id. at 146-47. In Adams, the informant was personally known to the police officer. Id. A known informant is considered to be more reliable than an anonymous informant because the known informant can be subject to criminal liability for falsely reporting an incident. See Harris v. New York, 401 U.S. 222 (1971).
46. Id. at 148.
47. Id.
48. Forceful Terry stops may not be made on mere suspicion, inarticulable hunches or simple good faith. See Sibron v. New York, 392 U.S. at 63-65.
formation obtained by the officer is such as would persuade a reasonable man that the action taken was proper. 49

III. The Intermediate Response Concept

The Adams majority, Mr. Justice Rehnquist speaking for six members of the Court, indicated in a dictum interpretation of the Terry doctrine that an officer is not restricted to a choice between a valid probable cause arrest and inaction which may "allow a crime to occur or a criminal to escape." 50 Instead, an officer having an adequate basis for suspecting that a crime has occurred or will occur may adopt an "intermediate response" by making "a brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information ... ." 51 Reading Adams in view of this language, it might be argued that the Court has extended Terry from its original purpose of crime prevention and protection of the officer to that of crime detection as well. 52 Facing a diverse selection of encounters between police officers and citizens, lower courts have struggled in their efforts to apply the few stop and frisk principles established thus far by the Supreme Court. As will be shown, it is unfortunate, in light of more recent cases, that the Adams majority found it necessary to stray from the careful language used by the Terry Court in formulating a limited exception to the constitutional requirement of probable cause.

The Pennsylvania Supreme Court has consistently followed Terry, as interpreted by the court in Commonwealth v. Hicks. 53 In Hicks, the supreme court said that "if probable cause to arrest

49. 392 U.S. at 24. The Court in Terry stated: "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," he may conduct a limited protective search for concealed weapons. Id.

50. 407 U.S. at 145. The Adams Court stated: "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." Id.

51. 407 U.S. at 146 (citing Terry).

52. Id. at 145 (quoting Terry, 392 U.S. at 22): The Adams court quoted: "'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 not probable cause to make an arrest.'" Id.

is absent, the police may still legitimately seize a person . . . and conduct a limited search of the individual's outer clothing . . . ."\textsuperscript{54} The court added, however, that the officer must "observe unusual and suspicious conduct on the part of the individual" which leads the officer reasonably to conclude that criminal activity is afoot and that the person with whom the officer is dealing may be armed and dangerous.\textsuperscript{55} In so holding, the \textit{Hicks} court followed closely the language of the Supreme Court in \textit{Terry}.\textsuperscript{56}

Four years after \textit{Hicks}, the intermediate response doctrine of \textit{Adams} was apparently approved in dictum by the Pennsylvania Supreme Court in an obscure footnote in the case of \textit{Commonwealth v. Pegram}.\textsuperscript{57} In \textit{Pegram}, the conviction of the defendant was overturned because the court found an absence of probable cause for the defendant's arrest. The court also determined that there were no facts from which one could have concluded that the defendant was either armed or dangerous, and therefore the search conducted by the officers was without lawful justification. Hence, the bare statement in the \textit{Pegram} footnote regarding an intermediate response was dictum susceptible only to the limited interpretation that an officer has a right to stop citizens under certain undefined circumstances that fall short of probable cause. As will become evident from the discussion which follows, the Pennsylvania Superior Court has evolved an intermediate response doctrine that far exceeds in scope any reasonable interpretation of the authoritative case law heretofore discussed.

\textbf{IV. THE SUPERIOR COURT'S INTERPRETATION OF "INTERMEDIATE RESPONSE"}

As Professor Wayne LaFave once observed "it is clear that in the years ahead one of the major tasks of the courts will be to flesh out the evidentiary standards for temporary investigative seizures."\textsuperscript{58} The Pennsylvania Superior Court, through its fourth

\textsuperscript{54} \textit{Id.} at 158, 253 A.2d at 279.
\textsuperscript{55} \textit{Id.} at 158-59, 253 A.2d at 279.
\textsuperscript{56} \textit{Id.} at 160, 253 A.2d at 280.
\textsuperscript{57} 450 Pa. 590, 301 A.2d 695 (1973).
\textsuperscript{58} LaFave, \textit{supra} note 6, at 67. "Police authority to investigate suspicious activity should be conferred in terms of the power to make a temporary seizure; concomitantly, the courts should become more vigilant in striking down other investigative techniques which are more offensive." \textit{Id.} at 124.
amendment decisions, is now developing standards of conduct for police officers in the investigation of alleged criminal activity. Recent decisions by the court involving such police activity as stop and frisk, suspect relocation, and search and seizure have witnessed the approval of intrusive conduct on the authority of an intermediate response doctrine, a doctrine created by the superior court and based loosely on the somewhat dubious language in Adams referring to an "intermediate response." It is suggested, however, that Adams must be interpreted in a manner consistent with Terry, inasmuch as Terry was deemed to be controlling case law by the Adams Court, and, hence, that any reading of the intermediate response language as an authorization for more intrusive conduct is at odds with authoritative interpretations of the fourth amendment.

A. Stop and Frisk

The original standard for stop and frisk, that of a reasonable suspicion of criminal activity, has developed into a lesser standard in Pennsylvania. The most recent modification of the standard is found in the superior court case of Commonwealth v. Sheridan,59 decided in 1981, where a stop and frisk was approved by the court on a standard less exacting than that of reasonable suspicion.60

The facts of Sheridan were that at 3:00 a.m. on March 19, 1979, a Philadelphia police officer stopped a suspect to inquire into his activities. This stop was made within two or three minutes after receipt of a radio dispatch requesting that officers search for a black male, five feet, eight inches tall, wearing a white raincoat and a cap. The suspect was a black man, about five feet, eight inches tall and was wearing a tan overcoat and no hat.61 The record shows that the street was deserted at the time of the incident, except for the presence of the suspect. Twice the police officer directed inquiries to the suspect and each time the suspect did not respond. As a result, the officer conducted a frisk of the

60. Id. at 279, 437 A.2d at 45.
61. Id. The Court also stated that the defendant's silence in response to the officer's inquiries raised the level of suspicion which ultimately justified the officer's search. Id. at 46.
suspect and found a .32 caliber revolver. A further search revealed two wallets, one of which belonged to the victim whose report led to the transmission of the radio dispatch.\textsuperscript{62}

The majority of the superior court found that the initial stop and questioning of the defendant was a valid intermediate response, justified by the defendant's general similarity in appearance to the description communicated to the officer, combined with the absence of other persons on the street at that early morning hour.\textsuperscript{63} The court's rationale, however, is not consistent with the standards ascribed for a stop and frisk in \textit{Terry} and \textit{Adams}. The police officer in \textit{Terry} personally observed the suspects' suspicious activities for "an extended period of time" before approaching them.\textsuperscript{64} The \textit{Adams} Court placed great emphasis on the specificity and reliability of the informant's tip which led to the encounter in that case.\textsuperscript{65} In \textit{Sheridan}, however, the suspect was a black man of average height who did not otherwise match a comparatively general description issued by the radio dispatch. The mere fact that the suspect was one of few persons on the street at the time of the crime is not a valid basis for the stop unless the police officer had some reason to believe that the person sought after was travelling by foot rather than some other, perhaps more likely, means of transportation. Without a more sound basis for the officer's stop of the defendant, the court's approval of the act grants the police a license to stop almost any person on foot within the vicinity of a crime.

The \textit{Sheridan} court also concluded that the search of the defendant was consistent with the standard set forth in \textit{Terry}, basing the conclusion on a warning in the radio dispatch that the suspect may be armed and on the defendant's failure to respond to the officer's questions.\textsuperscript{66} There was no showing in \textit{Sheridan} that the officer reasonably feared for his safety and was thus justified in frisking the suspect. In essence, then, the validity of the stop was sufficient to justify the search—a result which is inconsistent with the \textit{Terry} doctrine as well as the more demanding requirement of probable cause.

\textsuperscript{62} 292 Pa. Super. at 279, 437 A.2d at 46.
\textsuperscript{63} \textit{Id.}
\textsuperscript{64} 392 U.S. at 23.
\textsuperscript{65} \textit{See supra} text accompanying note 45.
\textsuperscript{66} 292 Pa. Super. at 284, 437 A.2d at 47.
B. Relocation of Persons

In *Terry*, the Supreme Court authorized a limited exception to the probable cause requirement whereby a police officer may stop and frisk a suspect, provided, in retrospect, the officer is able to point to specific and articulable facts which would warrant a reasonable person in the belief that the intrusion was justified.⁶⁷ In *Adams*, the Court characterized the *Terry* exception as an intermediate response, whereby police officers may make a "brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo . . . ."⁶⁸ The Pennsylvania Superior Court, without further incentive from an authoritative court, has used the passing reference to an intermediate response as a springboard to expand the *Terry* doctrine to include intrusions by police officers which are clearly beyond the intended scope of *Terry*. Such is the result of two recent cases wherein the court permitted the relocation of suspects for further investigation subsequent to their initial stop on grounds amounting to less than probable cause.

In *Commonwealth v. Harper*,⁶⁹ a police officer learned from passengers on a trolley that three individuals involved in a brutal stabbing had boarded a bus across the street. The officer boarded the identified bus and discovered six men who fit the general descriptions of the suspects. Unable to identify the three offenders, the officer forced all six men and another individual from the street to accompany him to the hospital, where each suspect was paraded individually before the victim for identification.⁷⁰ The defendant was identified by the victim as one of the attackers.

Without reference to *Terry*, *Adams*, or the intermediate response doctrine, the superior court concluded that the police officer's conduct in "momentarily detaining" the seven suspects was reasonable under the circumstances.⁷¹ The court found the existence of probable cause to believe that the perpetrators of the crime were on the bus to be significant, as well as the heinous nature of the crime involved, and "the small number of suspects"

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⁶⁷. 392 U.S. at 21-22.
⁶⁸. 407 U.S. at 146.
⁷⁰. *Id.* at 346-47, 375 A.2d at 130-31.
⁷¹. *Id.* at 348, 375 A.2d at 131.
detained. The court did not address that fact that at least four innocent persons were knowingly detained and transported against their will from the scene of the crime.

Harper looms as a major extension of the stop and frisk case law. Both Terry and Adams involved individual suspects and police activity that occurred at the place of the stop. In Harper the police officer detained seven individuals with the knowledge that at least half were not involved in the criminal activity, and transported all seven detainees from the point of original detention to a hospital.

The superior court again faced the issue of suspect relocation in the case of Commonwealth v. Lovette. A policeman in that case observed three males with mud and dirt on their shoes standing on a street corner approximately one and one-half blocks from the scene of a burglary. He had obtained information that the perpetrators of the crime had crossed a rain-soaked backyard some twenty-five minutes before. The officer approached the three men, questioned them, and after deciding that their answers were evasive, transported the trio to the scene to determine if the burglary victim could identify a hat in the possession of one of the defendants. Prior to placing the men in the police wagon, the officer conducted a "pat-down" search which revealed that one of the individuals possessed a ring and a silver dime with numismatic value. The three items were subsequently identified by the complainant, whereupon the three men were arrested and taken to the police station.

The Lovette court approved the actions of the police officer as those of a proper intermediate response. By so holding, the court sustained conduct which exceeds the authority granted to police officers by Terry and its companion cases with respect both to the search and to relocation of the suspects. A first ques-

72. Id.
74. Id. at 253, 413 A.2d at 391.
75. Id.
76. Id. at 254, 413 A.2d at 392. Courts of other jurisdictions also have approved the relocation of suspects to the scene of the crime on less than probable cause. See People v. Gatch, 56 Cal. App. 3d 505, 128 Cal. Rptr. 481 (1976); In re Lynette G., 54 Cal. App. 3d 1087, 126 Cal. Rptr. 898 (1965); State v. Byers, 85 Wash. 2d 783, 539 P.2d 833 (1975); State v. Isham, 70 Wis. 2d 718, 235 N.W.2d 506 (1975).
tion is whether the search was validly initiated, inasmuch as it is not evident from the court's discussion that the suspects posed a threat to the officer's safety. Second, it appears that the scope of the search conducted does not comport with the *Terry* doctrine. By approving the acquisition by the officer of the ring and the silver dime, the court extended the permissible scope of a stop and frisk search beyond "a limited patting of the outer clothing of the suspect for concealed objects which might be used as instruments of assault." The *Lovette* court also reaffirmed and extended the right, established in *Harper*, of police officers to relocate citizens. The court reaffirmed the tool of relocation as a valid intermediate response and permitted the relocation without a showing that the victim was unable to attend the scene of detention, as was the case with the stabbing victim in *Harper*.

Even disregarding the absence of authority in *Terry* or *Adams* for the relocation of a suspect without probable cause, a more recent pronouncement of the Supreme Court in *Dunaway v. New York* clearly suggests that no suspect may be transported in the absence of probable cause. The defendant in *Dunaway* was transported involuntarily to the police station for interrogation and only subsequently arrested. The Court concluded that the defendant's "detention for custodial interrogation" amounted to an arrest in contravention of the defendant's fourth amendment rights. Thus, the weight of the case law strongly suggests that relocation on less than probable cause is inconsistent with the fourth amendment.

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77. 392 U.S. at 65.
78. 271 Pa. Super. at 253-254, 413 A. 2d at 392. On appeal the Pennsylvania Supreme Court reversed and awarded the defendant a new trial. Commonwealth v. Lovette, ___ Pa. ___, 450 A.3d 975 (1982). Writing for the majority, Justice Nix ruled that placing the defendant and his companions in the police vehicle and transporting them to the scene without their consent constituted an arrest as traditionally defined in Pennsylvania. Id. at 978. Finding no probable cause to make such an arrest, the court could not conclude "that the instant seizure [of the person of the defendant] is so clearly within the *Terry* exception as to warrant a deviation in this case from this jurisdiction's longstanding rule of arrest based on probable cause." Id. at 980.
80. Id. at 213.
81. The issue of relocation of a criminal suspect was addressed by the California Supreme Court in People v. Harris, 15 Cal. 3d 384, 124 Cal. Rptr. 536, 540 P.2d 632 (1975), cert. denied, 425 U.S. 934 (1976). In *Harris* the police transported the defendant to the scene of a crime for further interrogation and possi-
C. Search of A Home With Less Than Probable Cause.

In Commonwealth v. Daniels, the superior court approved the entry and search of a home, notwithstanding the absence of probable cause or even facts supporting a search under Terry. In Daniels, police officers approached an apartment to investigate an anonymous phone call in which it was reported that a screaming female had been taken from a car into the apartment. When the defendant answered the door, the officers questioned him about the report. The defendant did not respond to the questions, but instead walked away from the open apartment door. The officers followed the defendant into the apartment and then into his bedroom, where they discovered in plain view a box of plastic bags "containing a tan substance, later identified as heroin." The court concluded that the officers made a valid entry into Daniels' apartment based on Daniels' consent, or, because the consent issue was not clear, alternatively on Daniels' "criminally suspicious conduct [in walking away from the door], viewed in light of the anonymous phone call." Noting that "[t]he Terry line of cases has been expanded in Pennsylvania to include an 'intermediate response' applicable to circumstances where facts may not warrant an arrest," the court further concluded that the officers adopted a proper intermediate response by following Daniels into his bedroom. The court determined that it was necessary for the officers, in seeking to question Daniels, to follow him into his bedroom, where the contraband came into plain

84. 280 Pa. Super. at 280, 421 A.2d at 722.
85. Id. at 283, 421 A.2d at 742.
86. Id. at 284, 421 A.2d at 724.
87. Id. at 285, 421 A.2d at 725.
view. In further support of its decision, the court balanced the competing interests of an individual and the state and decided that the state's interest in encouraging active police investigation should prevail.

In *Terry*, the Court recognized that there are occasions when police must inquire into possible criminal activity in spite of the absence of probable cause to support an arrest. Even so, the Court preserved the individual's fourth amendment right to freedom from unreasonable governmental encroachment upon the privacy of his person and his home. The Pennsylvania Superior Court, however, has broadened the scope of *Terry* and *Adams* by authorizing a police officer to enter a home and investigate suspected criminal activity. In *Terry* and *Adams* the reasonable expectations of privacy violated by the searches were less than that associated with the sanctity of a person's home.

The *Daniels* court also reduced the level of showing required to justify an intrusion. In *Terry* the officer was acting on first-hand observations and in *Adams* the officer knew the informant, but the police in *Daniels* were acting on information received from an anonymous source. The court held that although the tip was not sufficient to support an exception to the warrant requirement, it was sufficient to support stopping and questioning the defendant and, in this case, entering the defendant's home.

In a concurring opinion in *Terry*, Justice White emphasized that "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." Despite the clear language of Justice White's concurrence, the Pennsylvania Superior Court effectively has held

88. *Id.*
89. *Id.* at 284, 421 A.2d at 724.
90. 392 U.S. at 23.
91. The action in *Terry* occurred on the streets of Cleveland, Ohio, and the confrontation in *Adams* occurred in an open parking lot.
93. *Id.* at 146.
94. 280 Pa. Super. at 280, 421 A.2d at 725.
95. *Id.* at 284, 421 A.2d at 724.
96. 392 U.S. at 34 (White, J., concurring). See also *Brown v. Texas*, 443 U.S. 47 (1979) (overturning conviction of defendant arrested for refusing to identify himself and explain what he was doing).
that a refusal to respond to an officer's questions empowers the officer to act in a manner which was constitutionally prohibited prior to the interrogation.

D. Seizure of Person and Property Based on Reasonable Suspicion.

*Terry* and *Adams* recognized the duty of a police officer in proper circumstances to approach a person in an appropriate manner "for purposes of investigating possibly criminal behavior" even in the absence of probable cause.\(^7\) Such an investigative intrusion is appropriate, however, only where the officer reasonably believes that there exists a substantial possibility that criminal conduct has occurred, is occurring, or is about to occur. The Court in *Terry* and *Adams* focused on the reliability of the information on which the officer based his intrusive act and concluded that the act is justified only in circumstances where a person of reasonable caution would agree that the act was justified. In no case has the Court authorized intrusive acts on less than probable cause without substantial justification. The superior court, however, has apparently authorized intrusive governmental action under a lesser standard of review than that set forth in *Terry* and *Adams*.

In *Commonwealth v. LeSeuer*,\(^8\) police officers received a tip that two men ran from a house carrying stereo equipment.\(^9\) The officers stopped the two men to determine their identity and to inquire about their reason for carrying five pieces of stereo equipment. In response to the officers' questions, the defendant stated that he was in route from a pawn shop where he had been unsuccessful in an attempt to pawn the stereo equipment because the turntable lacked a needle. Noting that the turntable had a needle, the officers confiscated the stereo equipment and took the defendant into custody.\(^0\)

The superior court concluded that the initial stop and questioning of LeSeuer was a valid intermediate response.\(^1\) Although the

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\(^7\) 407 U.S. at 145 (quoting from *Terry*, 392 U.S. at 22).
\(^9\) Id. at 500, 382 A.2d at 127. An unidentified elderly man waved the officer's vehicle down and stated that the defendant had just come running out of a house carrying stereo equipment. *Id.*
\(^0\) 252 Pa. Super. at 500, 382 A.2d at 127-28.
\(^1\) Id. at 501, 382 A.2d at 128.
court cites "the totality of the circumstances" as justifying the officers' reasonable belief "that criminal activity was afoot . . .,"102 in fact the single circumstance giving rise to the action was the unsubstantiated observation that LeSeuer and another man ran from a house. Even assuming that the officers were justified in basing their action on the single accusation, the observation related to the officers did not accuse LeSeuer of a crime but merely of running from a house. In fact, once the police officers took the defendant into custody and seized the property, the defendant was released and given a property receipt for the equipment because there was no report of a burglary in the neighborhood.103 It was not until later that the officers learned that the stereo equipment had been taken in a burglary, whereupon the defendant was re-arrested.104 Admittedly, LeSeuer's alleged act may have seemed suspicious and probably warranted further investigation, but it did not justify the officers' act in seizing the two men.105

Three judges dissented in two separate opinions to the majority's position in LeSeuer. Even the dissenters, however, did not make an issue of the fact that the officers had no information that a crime had occurred. The major difference between the dissenters and the majority relates to the extent of the questioning that should have occurred prior to taking the defendant and the property into custody.106 Thus, both the dissenting judges and the majority agreed that stopping and questioning persons as a result of their transportation of property in an unusual manner is a proper police practice.

102. Id.
103. Id. at 500, 382 A.2d at 128.
104. Id.
105. See 392 U.S. at 16.
106. See 251 Pa. Super. at 502-07, 382 A.2d at 128-31. Judge Spaeth criticized the majority as follows:

There was no need for the police to act as they did. They could have said, "But the stereo has a needle in it," . . . [T]he police were only a few questions and a few minutes away from learning enough to be able to decide, either to release appellant . . . or to arrest him because the questions asked him had elicited a story "bizarre and totally incredible . . . under all the facts and circumstances." . . . Instead of taking that little trouble, the police drove appellant off to the station house—just the response that Terry and Adams make unnecessary, and preclude."

Id. at 507, 382 A.2d at 231.
V. THE SUPERIOR COURT'S MISAPPLICATION OF INTERMEDIATE RESPONSE

It follows from the foregoing discussion that, broadly speaking, the Pennsylvania Superior Court has narrowed the scope of protection offered by the fourth amendment in three general areas. First, the court has reduced the level of showing necessary to justify a stop and a search below the standards delineated in Terry and Adams, thereby broadening the state's scope of authority to intrude into the lives of all persons in a quest for those who have violated the law. In LeSeuer, the court sanctioned the stop and subsequent seizure of the defendant, and property in the defendant's possession, in the absence of any evidence that the defendant had committed a crime or even that a crime had been committed. In Daniels, the duty of police officers to seek answers to their questions was found by the court to be a sufficient basis for the search of the defendant's home in the absence of a warrant and probable cause. The Sheridan court determined that the defendant's failure to respond to an officer's question justified the subsequent search of the defendant for weapons.

Second, the court has expanded the permissible scope of a Terry search beyond a limited, protective search for a conventional weapon which might threaten the personal safety of the officer or other persons nearby. In Lovette, the court approved an intermediate response by a police officer, including a search in which the officer discovered and seized a ring and a dime, the size and nature of which items clearly suggest a search of impermissible scope.

Finally, the court has extended to police officers the authority to transport suspects away from the point of the initial stop, on less than probable cause, for the purpose of determining whether probable cause exists for the suspects' arrest. In Harper, the court approved the relocation of seven persons to a hospital so that the victim of a stabbing might identify his three assailants. The court in Lovette found permissible the relocation of three

107. See supra notes 96-106 and accompanying text.
108. See supra notes 82-94 and accompanying text.
109. See supra notes 59-66 and accompanying text.
110. See supra notes 73-78 and accompanying text.
111. See supra notes 69-72 and accompanying text.
suspects to the scene of a burglary for possible identification of items in the possession of the suspects.112

A court's reluctance to free an individual when he is clearly guilty of a criminal offense is understandable. A court's refusal, however, to sustain the fourth amendment rights of that individual, without regard to the nature of the offense, is not understandable. That refusal is itself an affront to the rights of all individuals. Where the standard of review used by the court to approve the state's conduct focuses primarily on an officer's subjective reactions, the effect is to insulate the state's conduct from judicial review. What is more, in ridding society, probably only temporarily, of one or two offenders, the court exposes society to intrusions of the nature approved by the convictions. These governmental intrusions will infringe the constitutional freedoms of innocent as well as criminal individuals and will thereby exacerbate the sometimes heated relations between police officers and other members of society.

A. The New Intermediate Response Standards Will Lessen Judicial Control of Police Conduct

Among the responsibilities of the judicial branch of the United States government is that of interpreting the Constitution to determine whether a given act by a governmental body is consistent with constitutional limitations on that body. The standards applied by courts in evaluating the constitutionality of the act vary with the nature of the particular act. In the case of confrontations between police officers and ordinary citizens, the Supreme Court has included, at least to some extent, a note of objectivity in the governing standard, whereby courts can place a meaningful check on the occasional tendency of the government to exceed its authority as limited by the fourth amendment.113 As the governing standard gradually evolves elements of greater subjectivity, courts are forced to rely more on the mere opinions of police officers rather than on substantiating evidence, and the meaningfulness of the judicial check on executive liberty is diminished.

The new intermediate response doctrine promulgated recently

112. See supra notes 73-78 and accompanying text.
113. Comment, supra note 2, at 427.
by the Pennsylvania Superior Court embodies a highly subjective standard by which street encounters between police officers and ordinary citizens are to be evaluated. The effect of the superior court decisions previously described has been the elimination of the reasonable man standard for nonforcible, though intrusive, searches and seizures. The standard established by the superior court forces trial courts, when determining whether police actions are reasonable, to give conclusive weight to the subjective decisions of the police officers, in total disregard of the substantiating evidence deemed significant in Terry and Adams.\(^{114}\) Hence, the absence of objectivity in the standard of review inhibits the ability of the reviewing court to scrutinize effectively the scope of the governmental intrusion and to protect the fourth amendment interests of persons confronted.

In the final analysis, Pennsylvania's intermediate response doctrine is a perversion of the fourth amendment as interpreted to date by the United States Supreme Court. The ultimate effect of the doctrine will be an increase in the number of confrontations between police officers and citizens. Most of the encounters will never be brought to the attention of the courts due to the absence of criminal conduct on the part of the citizen accosted. Thus, in the case of most encounters, the intrusive conduct of the police will escape the supervision and control of the judiciary.

Occasionally, an encounter will lead to an arrest and a court will be faced with the issue of whether the defendant's fourth amendment rights were violated so as to necessitate application of the exclusionary rule. In most cases the intermediate response doctrine will enable the officer to justify his conduct by reference to a tip from an informant whose identity must remain undisclosed, or by reference to the officer's duty to investigate, by questioning or otherwise, suspicious behavior on the part of the defendant. Because the officer will be judged by a subjective standard, whatever his explanation, he often will be able to circumvent the obstacle presented by the fourth amendment.\(^{115}\)

In addition to reducing the standard of review, the superior court has broadened the circumstances in which police officers may conduct an intermediate response. The court has permitted

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114. See supra notes 92-94 and accompanying text.
115. See Comment, supra note 2, at 432.
an intermediate response where an officer received an anonymous tip.\textsuperscript{116} The police, when pursuing such a tip, need no longer establish the quantum of evidence necessary to satisfy the \textit{Terry} test of reasonable suspicion. They can now rely on second-hand information of unknown reliability when such information generally describes an identifiable suspect. Thus, the court has diverged significantly from the strict standards of \textit{Terry} and \textit{Adams}\textsuperscript{117} by failing to require testimony corroborating the existence of the tip beyond the testimony proffered by the arresting officer. The superior court's decisions open the door to a potential increase in unreasonable police actions which permit innocent citizens to be frisked, and possibly arrested, whenever an anonymous tip alleges that a citizen has engaged in suspicious activity or is carrying a weapon. An unethical police officer may reasonably expect to succeed in justifying an illicit frisk or arrest merely by making false claims that he received a dispatch or an anonymous tip.

Finally, the adoption of the lesser intermediate response standard may encourage officers, in the absence of a more favorable alternative, to justify their conduct by urging the court to find that, once stopped, the defendant consented to the intrusion.\textsuperscript{118} In addressing preliminarily the issue of consent, the court may never reach the issue of the reasonableness of the invasion. Because the law does not require willing consent, but only the absence of overt coercion,\textsuperscript{119} the intermediate response doctrine, with its easily justified initial stop, is particularly sensitive to abuse in this regard. Hence, once again the intermediate re-

\textsuperscript{116} In \textit{Commonwealth v. Daniels}, the police officer's duty to question arose form an anonymous telephone tip. \textit{See supra} note 83 and accompanying text.

\textsuperscript{117} However, the Court in \textit{Adams} admitted that the informant's unverified tip may have been insufficient for an arrest or search warrant. 407 U.S. at 147, (citing \textit{Spinelli v. United States}, 393 U.S. 410 (1969) and \textit{Aguilar v. Texas}, 378 U.S. 108 (1964)). \textit{Aguilar} and \textit{Spinelli} propose a two-pronged test by which a magistrate can determine whether an arrest or search warrant should issue. The informant must be shown to have been reliable in past dealings with the police, and his information must provide a basis for concluding that the defendant was engaged in criminal activity.


\textsuperscript{119} 412 U.S. at 228.
sponse effectively diminishes judicial control of stop and frisk situations.

C. The New Standard Will Have an Adverse Effect on Police-Community Relations

The recent decisions of the Superior Court of Pennsylvania have eliminated the Terry requirement that an intruding police officer be able to point to specific and articulable facts such as would justify a reasonable person in the belief that criminal activity is afoot. The decisions suggest that the behavior on the part of a suspect that will justify intrusive conduct by the officer is that of any sufficiently suspicious activity, a standard which is significantly reduced in objectivity from the Terry standard. One may expect that the result of such a reduced standard will be an increase in invasions of individual privacy. More citizens than ever before will be subject to street encounters with police officers.

In United States v. Cortez, the United States Supreme Court addressed the circumstances that justify intrusions based on less than probable cause; that is, what circumstances constitute a reasonable suspicion that criminal activity is afoot. The Court suggested that police officers could accumulate their own reasonable suspicions based on trained investigative activities. The Court also determined that objective facts, meaningless to the untrained, "can be combined with permissible deductions . . . to form a legitimate basis for suspicion of a particular person." Hence, Cortez affirms the Terry requirement that there be articulable facts which give rise to the reasonableness of an officer's suspicion.

The superior court, however, apparently has eliminated any requirement that the officer be able to articulate specific facts in the course of formulating a reasonable suspicion that criminal activity is afoot. This follows from the elimination by the superior court of informer reliability as a requisite in determining whether a police officer has reasonable grounds to conduct a stop and frisk. The Adams case suggests very strongly that the personal reliability or accountability of the informant remains an im-

120. Comment, supra note 2, at 409-10.
121. 101 S. Ct. at 695.
122. Id. at 695.
important ingredient in the total factual picture presented to the officer as a prelude to a stop and frisk.\textsuperscript{123} Yet, the superior court ruled that a private citizen may be subject to a police stop, questioning, and frisk based solely on the vague and unsubstantiated accusation of an anonymous tip.\textsuperscript{124} Such a result is not supported by substantial judicial authority and ultimately risks an adverse reaction in the minority communities of this nation as the number of intrusive encounters rises.

An individual who is stopped on the street or in a public place and frisked may be subjected to humiliation in front of his family, friends, or neighbors. Being frisked is often a more emotional experience in minority communities, where police officers are often of a different race than the majority of citizens in the community.\textsuperscript{125} For this reason, and because a stop and frisk represents an invasion of individual privacy which is most often resented, such encounters are one of the major causes of tension between police and the community.\textsuperscript{126} The reduction in standard effected by the superior court will cause officers to react more often to marginally unusual conduct\textsuperscript{127} and the majority of these confrontations will involve members of minority groups. Hence, the ultimate effect of the court's holding may include greater friction in minority communities.

Obviously, the reduced standard also will have the intended effect of increasing the number of arrests. One must decide, however, if the benefits gained by granting greater freedom to police officers to investigate crime outweigh the detrimental effects on personal liberty and community harmony. To this end it is noteworthy that the reduced standard will result primarily in the improved detection of minor crimes.\textsuperscript{128} Police rarely encounter felony suspects without the benefit of a complaining witness; almost all police-initiated encounters involve misdemeanors.\textsuperscript{129} It would appear on this account, then, that the losses to society re-

\begin{enumerate}
\item[123.] 407 U.S. at 146. In \textit{Adams} the Court observed that "[t]his is a stronger case than obtains in the case of an anonymous telephone tip." \textit{Id.}
\item[124.] \textit{See supra} note 83 and accompanying text.
\item[126.] 392 U.S. at 14 n.11. The \textit{Terry} Court recognized that street interrogations and stop and frisks often are misused by police, particularly to harass youths and minority groups. \textit{Id.}
\item[127.] \textit{See Comment, supra} note 2, at 432.
\item[129.] \textit{Id.} at 551.
\end{enumerate}
sulting from greater numbers of intrusive conduct will exceed the losses society would suffer by criminal conduct which could otherwise go undetected. The words of Justice Handler of the Supreme Court of New Jersey are compelling:

Where intrusive police action is countenanced without ... foundations and rationalized only upon an apprehension of crime in general, then every citizen, regardless of personal circumstances becomes a convenient object of distrust and wariness, a handy target of the police. Such an approach may indeed reduce lawlessness, thwart violence and increase security. But it will accomplish that at the expense of countless numbers of law abiding and blameless people, who will be exposed needlessly to intrusive harassment and the consequent diminution of their personal freedom and individual dignity.130

VI. RECOMMENDATIONS

The Supreme Court of Pennsylvania should reverse the superior court's erosion of citizens' fourth amendment rights and liberties by discarding the imprudent and unconstitutional intermediate response doctrine. In so doing, the supreme court should begin to adopt stop and frisk guidelines consistent with Terry and Adams to enable law enforcement personnel of the Commonwealth to develop lawful procedures for criminal investigation. Such guidelines should also prevent lower courts from evolving interpretive abuses of the nature of the intermediate response doctrine.

The Pennsylvania legislature should also take steps to provide a semblance of order to this disorderly area of the law.131 The legislature could adopt stop and frisk standards found in the American Law Institute Model Code of Pre-Arraignment Procedure132 or the Model Rules for Law Enforcement: Stop and Frisk.133

130. 381 A.2d at 772 (Handler, J., dissenting).
131. There would be considerable merit in barring the police from employing stop and frisk for minor crimes like possession of narcotics in order to remove the temptation from the police to go on fishing expeditions for contraband. This may be the kind of limitation which cannot easily be drawn as a matter of fourth amendment interpretation, but it could readily be imposed by state legislation designed to prevent stop and frisk from becoming 'stop and fish.' LaFave, supra note 6, at 65-66.
133. MODEL RULES FOR LAW ENFORCEMENT: STOP AND FRISK (College of Law, Arizona State University and Police Foundation, 1974).
Either code would provide the police officers of this Commonwealth clear guidelines for performing their duties. At the same time, the legislature would be providing the citizens of Pennsylvania with greater assurance that their fourth amendment rights will be protected and respected.