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persons.[105] Therefore, the Court could possibly uphold a provision which provides for loss of citizenship where an American voluntarily assumes the citizenship of another country,[106] for the person would not become stateless. Yet not inconceivable is the probability that the Court meant precisely what it stated: that every citizen, under all circumstances, has a constitutional right to remain a citizen until he specifically and voluntarily renounces that citizenship.

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CRIMINAL LAW—NEW YORK "STOP AND FRISK" STATUTE HELD CONSTITUTIONAL IN THE ABSENCE OF PROBABLE CAUSE FOR ARREST

A police officer received an anonymous telephone call informing him that a youth with a loaded revolver in his left-hand jacket pocket was standing on a certain corner. A detailed description of the youth was given. The policeman proceeded to the stated location and saw a boy, who matched the description given him by the caller, standing among a group of children. There was nothing in the youth's appearance to indicate that he was carrying a gun, and the detective had never seen or arrested him before. The officer approached the boy, placed him against a wall, and withdrew a loaded revolver from the youth's left-hand jacket pocket. Subsequently the defendant was indicted for violation of section 265.05 of the New York Penal Code. A motion to suppress evidence seized at the time of the arrest as constitutionally inadmissible was denied, the trial court ruling that the requirement of probable cause for arrest had been satisfied. The defendant was thereafter convicted upon a plea of guilty. The conviction was affirmed without opinion by the Appellate Term, Second Department, one judge dissenting. The New York Court of Appeals, while conceding that probable cause for arrest was not present, also affirmed, holding that under the "stop and frisk" amendment to the New York Code of Criminal Procedure (section 180-a), the search and subsequent seizure were constitutionally valid. *People v. Taggart*, 20 N.Y.2d 335, 229 N.E.2d 581, 283 N.Y.S.2d 1 (1967).

The fourth amendment to the Constitution of the United States protects the right of the people to be secure against unreasonable searches and seizures.[1] A search or seizure is reasonable, within the meaning of this amendment, if made pursuant to a warrant issued upon probable cause,[2] or, in the absence of such warrant, if made with consent,[3] in "hot pursuit,"[4] or incident to a lawful

105. Afroyim v. Rusk, 387 U.S. at 268.

106. *E.g.*, 8 U.S.C. § 1481(a)(1) (1964). This provision states that a national of the United States shall lose his nationality by "obtaining naturalization in a foreign state upon his own application . . . ."

1. U.S. Const. amend. IV.
2. Fed. R. Crim. P. 41(a).
3. Stoner v. California, 376 U.S. 483 (1964).
4. Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294 (1967).

arrest.[5] An arrest is lawful only if based upon probable cause.[6] Probable cause is an objective standard which is satisfied when those facts and circumstances known to the arresting officer at the time of the arrest are deemed sufficient to warrant a belief, in a man of reasonable caution and prudence, that a crime has been, is being, or will be committed.[7] In order to effectively protect the right against unreasonable search and seizure, the Supreme Court formulated the federal exclusionary rule,[8] which prohibits the admission of any evidence obtained in the course of an unreasonable search and seizure in a criminal action against the person from whom it was seized. In 1961 this rule was made binding upon the states in the landmark case of *Mapp v. Ohio*.[9]

In an effort to aid police in the detection and prevention of crime, some states, either by statute or otherwise, permit law enforcement officials, in the absence of probable cause, to stop and question persons whom they reasonably suspect are involved in criminal activity.[10] These states further allow a search of an individual so detained, where the officer reasonably suspects he is in personal danger.[11] The Uniform Arrest Act,[12] which has been adopted in somewhat modified forms by eight states,[13] provides for both the stopping and questioning of individuals under the above stated circumstances, and such police behavior is standard practice in all urban areas.[14]

In *Commonwealth v. Hicks*,[15] a police officer, investigating a burglary, stopped and questioned a man who had been walking in the vicinity of the crime The information given the officer was that the burglar was a Negro, had a mustache, and wore a brown coat. The defendant matched this description. In the course of his investigation, the policeman frisked the suspect and discovered a knife which was later introduced as evidence at the trial. The Superior Court of

5. Henry v. United States, 361 U.S. 98 (1959); Wong Sun v. United States, 371 U.S. 471 (1961).

6. Henry v. United States, 361 U.S. 98 (1959); United States v. Di Re, 332 U.S. 581 (1948); Carroll v. United States, 267 U.S. 132 (1925).

7. Carroll v. United States, 267 U.S. 132, 162 (1925).

8. Weeks v. United States, 232 U.S. 383 (1914); Agnello v. United States, 269 U.S. 20 (1925).

9. 367 U.S. 643 (1961).

10. Cannon v. State, 53 Del. 284, 168 A.2d 108 (1961); *See also* People v. Martin, 46 Cal. 2d 106, 283 P.2d 52 (1956); People v. Rivera, 14 N.Y.2d 441, 201 N.E.2d 32, 252 N.Y.S.2d 458; *cert. denied*, 379 U.S. 978 (1964).

11. People v. Simon, 45 Cal. 2d 645, 290 P.2d 531 (1965); Commonwealth v. Ballou, 350 Mass. 751, 217 N.E.2d 187 *cert. denied*, 385 U.S. 1031 (1966). For a complete discussion of this area of the law see Schwartz, *Stop and Frisk: A Case Study in Judicial Control of the Police*, 58 J. Crim. L., C. & P.S. 433 (1967); State v. Terry, Ohio App. 2d. 122, 214 N.E.2d 114, 34 Ohio Op. 2d 237 (1966), *cert. granted*, 87 Sup. Ct. 2050 (1967); Commonwealth v. Hicks, 201 Pa. Super. 1, 223 A.2d 873 (1966).

12. Warner, *The Uniform Arrest Act*, 28 U. Pa. L. Rev. 315 (1942).

13. Cal. Pen. Code § 833 (1957); Del. Code Ann. tit. 11, §§ 1902-03 (1953); Hawaii Rev. Laws, § 2554-5 (1955); Mass. Gen. Laws Ann. ch. 41, § 98 (1961); Mo. Rev. Stat. § 544.170 (1959); Neb. Laws ch. 132, at 471 (1965); N.H. Rev. Stat. Ann. §§ 954:2-954:3 (1960); R.I. Gen. Laws Ann. §§ 12-7-1 to -2 (1956).

14. Note, *Philadelphia Police Practice and The Law of Arrest*, 100 U. Pa. L. Rev. 1182 (1952).

15. 201 Pa. Super. 1, 223 A.2d 873 (1966).

Pennsylvania declared the search and seizure lawful, although probable cause was lacking, basing its decision on the need for effective law enforcement and the need for protection of police officers in the performance of their duties.[16] This decision was rendered in the absence of a statute authorizing such police action. In *State v. Terry*,[17] which is currently before the Supreme Court, a policeman observed the defendants behaving in an unusual manner in the early afternoon. The defendants had been standing on a street corner in downtown Cleveland. One of them walked down the street and looked into a jewelry store. He returned to the corner, and the two men spoke to each other. The second defendant then walked to the same store while the first remained on the corner. The defendants were joined by a third man and the sequence of events was then repeated several times. The officer approached the men, stopped and questioned them, and then frisked them, finding concealed weapons on two of the three. The court ruled that such police action was "reasonable" within the meaning of the fourth amendment, despite the absence of probable cause.[18] Again, there was no statute authorizing such conduct. A situation which in some ways resembles that of the instant case is found in *Commonwealth v. Ballou*.[19] There the police received an anonymous call, informing them that a certain man standing in front of a bar was carrying a loaded revolver. The officers proceeded to the bar and, upon seeing the suspect standing there, frisked him, finding a loaded weapon. The officers knew before the search that on a previous occasion this particular man had been convicted of unlawful possession of a gun. In addition, they had seen his name and picture on certain police circulars several times. The defendant was convicted and on appeal the court affirmed, saying "We make no conclusion that there was probable cause for arrest before obtaining proof of secret possession of the revolver. The point we decide is that the two officers acted reasonably in the steps taken to avoid being shot down. . . ."[20] In 1964, the New York State Legislature amended the New York Code of Criminal Procedure to include a section which authorized both the detention and questioning of persons who are reasonably suspected of certain types of criminal conduct, and the search of such persons where the detaining officer "reasonably suspects that he is in danger of life or limb. . . ."[21] In all but one[22] of the leading New

16. *Id.* at 225, 223 A.2d at 875-76.

17. 5 Ohio App. 2d 122, 214 N.E.2d 114, 34 Ohio Op. 2d 237 (1966); *cert. granted*, 87 Sup. Ct. 2050 (1967).

18. *Id.* at 124-25, 214 N.E.2d at 117-18, 34 Ohio Op. 2d at 239.

19. 350 Mass. 751, 217 N.E.2d 187, *cert. denied*, 385 U.S. 1031 (1966).

20. *Id.* at 753, 217 N.E.2d at 189-90.

21. N.Y. Code Crim. Proc. § 180-a (1964). The complete statute reads:

(1) A police officer may stop any person abroad in a public place whom he reasonably suspects is committing or is about to commit a felony or any of the crimes specified in section five hundred fifty-two, and may demand of him his name, address, and an explanation of his actions.

(2) When a police officer has stopped a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If the police officer finds such a weapon or any other thing the possession of which may constitute a crime, he may take it

York cases in this area,[23] a distinction was made between a "formal arrest and full search," which requires reasonable grounds for *believing* criminal activity has occurred (probable cause), and what is called a "stop and frisk"—a brief period of detention and a patting of the exterior of one's clothing, which requires only reasonable grounds for *suspecting* criminal conduct (reasonable suspicion).[24] It was said that only the latter is authorized by the statute. The theory behind this distinction is that objections against unreasonable searches and seizures are products of our concern with the right to privacy, and a "stop and frisk," being a somewhat lesser invasion of privacy than an "arrest and search," may thus be constitutionally justified by a more easily satisfied standard.[25]

The leading New York case in the area of "stop and frisk," arising before the effective date of the statute, is *People v. Rivera*.[26] In that case three detectives, patrolling in an area of high crime at one thirty in the morning, noticed the defendant walking back and forth in front of a bar and frequently looking inside. This behavior was observed for about five minutes. When the defendant spotted the officers, he walked away rapidly. One of the detectives told him to stop, identified himself as an officer and then frisked him, which resulted in the discovery of a gun. In affirming the conviction, the New York Court of Appeals stated that:

> The constitutional restriction is against unreasonable searches, not against all searches. What is reasonable always involves a balancing of interests. Here it is the security of the public and the police officer against a minor inconvenience and slight indignity. If we recognize this duty of the police we must also recognize its dangers. Frisk is a reasonable and constitutional means of minimizing this danger.[27]

The majority held that the stopping and questioning of suspicious individuals is not tantamount to an arrest, and thus does not require the standard of probable cause for its justification. They also concluded that a frisk is different

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and keep it until the completion of the questioning, at which time he shall either return it if lawfully possessed or arrest such person.

22. People v. Taggart, 20 N.Y.2d 335, 229 N.E.2d 589, 283 N.Y.S.2d 1 (1967).

23. People v. Rivera, 14 N.Y.2d 441, 201 N.E.2d 32, 252 N.Y.S.2d 458, *cert. denied*, 379 U.S. 978 (1964); People v. Peters, 18 N.Y.2d 238, 219 N.E.2d 595, 273 N.Y.S.2d 217 (1966); *prob. juris. noted*, 386 U.S. 980 (1967); People v. Sibron, 18 N.Y.2d 603, 219 N.E.2d 196, 272 N.Y.S.2d 374 (1966); *prob. juris. noted*, 386 U.S. 954 (1967). People v. Pugach, 15 N.Y.2d 65, 204 N.E.2d 176, 255 N.Y.S.2d 833 (1964); *cert. denied*, 380 U.S. 936 (1965).

Pugach has been widely condemned. It is very likely that circumstances outside the record largely determined the court's decision, and therefore the case should be of little precedential value. *See* Schwartz, *supra* note 11, at 436-40. *But see* People v. Reason, 52 Misc. 2d 425, 436, 276 N.Y.S.2d 196, 207-08 (Sup. Ct. 1966); People v. Cassesse, 47 Misc. 2d 1031 at 1033-34 (Crim. Ct. N.Y. 1965).

24. People v. Rivera, 14 N.Y.2d at 444, 201 N.E.2d at 35, 252 N.Y.S.2d at 463.

25. People v. Peters, 18 N.Y.2d at 245, 219 N.E.2d at 599, 273 N.Y.S.2d at 223.

26. 14 N.Y.2d 441, 201 N.E.2d 32, 252 N.Y.2d 458, *cert. denied*, 370 U.S. 978 (1964); Note, 50 Corn. L.Q. 529 (1965).

27. *Id.* at 444, 201 N.E.2d at 36, 252 N.Y.S.2d at 463.

from a search, and that, just as the latter is permissible if made incident to a lawful arrest, so may a frisk be permitted if made incident to a lawful stop.[28]

The first case to be decided under the New York statute was *People v. Peters*.[29] There an off-duty police officer discovered the defendant and another man "tiptoeing about" on the top floor of the apartment house in which the officer resided. When the defendant heard the officer approaching he turned and fled down the steps. The officer stopped him and "patted down" his clothing. He felt something hard in an opaque envelope in the defendant's pocket, and, thinking it might have been a knife, he removed and examined it. The envelope was found to contain burglar's tools. The New York Court of Appeals, in reaffirming the rationale of *Rivera*, held the search and seizure valid. The majority said the stopping and frisking of an individual is constitutionally permissible in a situation involving reasonable suspicion.[30]

In *People v. Sibron*,[31] decided on the same day as *Peters*, a police detective observed defendant talking to known narcotics users at various times throughout an eight hour period. The officer approached him in a restaurant, indentified himself as a detective, and requested that defendant accompany him to the street. Outside the restaurant the officer said to him, "You know what I am looking for." The defendant immediately reached into his pocket. The detective intercepted his hand and withdrew from the pocket a package wrapped in tinfoil, which, upon examination, contained narcotics. The New York Court of Appeals, in a memorandum decision, affirmed the conviction in the lower court, basing its decision on the principles set forth in *Peters*. The Supreme Court granted certiorari. Before the case was argued however, the prosecution moved for dismissal, conceding error as to the findings that the circumstances justified a reasonable suspicion of criminal conduct, and that the officer's fear of personal danger was reasonable. Therefore, both probable cause and reasonable suspicion being absent, the search and seizure could not be constitutionally justified. As of the time of this writing, no ruling on the motion has been announced.

The constitutional validity of the New York statute presents at least two very distinct questions. First, is there a legal distinction between the detention authorized by section 180-a and a formal arrest? If this is answered in the negative, then the New York law is clearly unconstitutional because, in effect, it authorizes the arrest of persons absent probable cause. If, however, there is a legal distinction between a "stop" and an "arrest," and if the former is permitted upon a showing of "reasonable suspicion," a second question arises as to whether a frisk will also be permitted upon such a showing. The Supreme

28. *Id.* at 443, 201 N.E.2d at 35, 252 N.Y.S.2d at 462.
29. 18 N.Y.2d 238, 219 N.E.2d 595, 273 N.Y.S.2d 217 (1966), *prob. juris. noted*, 87 Sup. Ct. 1291 (1967); Note, 35 Ford. L. Rev. 355 (1966).
30. *Id.* at 242, 219 N.E.2d at 600, 273 N.Y.S.2d at 222.
31. 18 N.Y.2d 603, 219 N.E.2d 196, 272 N.Y.S.2d 374 (1966); *prob. juris. noted*, 386 U.S. 954 (1967); Note, 33 Brooklyn L. Rev. 38 (1966).

Court of the United States has never passed upon the constitutionality of the frisk authorized by these statutes and state court decisions, nor, prior to *Peters*, *Sibron*, and *Terry*, had it the opportunity to do so. It has on two occasions, however, been presented with the question of the legality of police detention in the absence of probable cause.

In *Henry v. United States*[32] the Court held the mere stopping of defendant's car constituted an arrest, and, probable cause being absent at that time, both the arrest and seizure were unlawful.[33] Throughout this case however, the prosecution conceded, and the Court accepted the concession, that the arrest occurred at the moment the defendant was stopped by the officers. Therefore the question of whether there can be a lawful detention that does not amount to a formal arrest was not before the Court, and was not decided. Two justices dissented, arguing that an arrest *did not* occur the moment the defendant was stopped for questioning, and that the majority erred in accepting the prosecution's concession to the contrary.[34] In the only other Supreme Court case to approach this problem,[35] police officers, without probable cause for arrest, stopped the defendant and in the course of their investigation discovered a package of narcotics.[36] The Court remanded the case for a determination of the exact point at which the arrest occurred. It is significant that although the opportunity was afforded, the Court did not rule that every detention is an arrest and thus, to be lawful, must be accompanied by probable cause. The most that can be said of this case in reference to the constitutionality of a "stop" without probable cause, however, is that perhaps every detention does not constitute an arrest.[37] Although a final ruling by the Supreme Court is yet to come, there are several federal court decisions in which the power to stop and question, based upon facts and circumstances not amounting to probable cause, has been upheld.[38] In *United States v. Vita*,[39] the United States Court of Appeals for the Second Circuit ruled that an eight hour period of detention, for the purpose of investigation did not constitute a formal arrest.[40] Although the defendant had submitted to the investigation voluntarily, the court stated that

> even if Vita had been involuntarily detained for questioning . . . we would not necessarily hold such detention to be an "arrest" within the meaning of Federal Rule of Criminal Procedure 5(a). The rule

32. 361 U.S. 98 (1959).
33. *Id.* at 103.
34. *Id.* at 104.
35. United States v. Rios, 364 U.S. 253 (1960).
36. The record is unclear as to the precise series of events which followed.
37. Leagre, *The Fourth Amendment and The Law of Arrest*, 54 J. Crim. L., C., & P.S. 393, 395 (1963).
38. United States v. Vita, 294 F.2d 524 (2d Cir. 1961), *cert. denied*, 369 U.S. 823 (1962) (dictum); United States v. Thomas, 250 F. Supp. 771 (S.D.N.Y. 1966); United States v. Bonanno, 180 F. Supp. 71 (S.D.N.Y. 1960).
39. 294 F.2d 524 (2d Cir. 1961), *cert. denied*, 369 U.S. 823 (1962) (dictum).
40. *Id.* at 529.

> does not apply to a case in which federal officers detain a suspect for a short and reasonable period in order to question him.[41]

In *United States v. Bonnano*,[42] the court, in concluding that the detention involved in the case was not an arrest, said that "every temporary restriction of absolute freedom of movement is not an illegal police action demanding suppression of all resultant evidence. . . ."[43]

In the instant case the court admitted that probable cause for arrest was absent and, therefore, that a search made incident to an arrest would have been violative of the protections guaranteed by the fourth amendment. The majority concluded, however, that notwithstanding the absence of probable cause, the search was justified under the New York "stop and frisk" statute.[44] The anonymous telephone call, coupled with the presence of a youth who "matched perfectly" the description given by the informant, was sufficient to warrant a reasonable suspicion in the mind of the officer that a crime was being committed.[45] The presence of a youth who was reasonably suspected of possessing a loaded pistol in the midst of a group of children created a situation which not only justified detention of some sort, but clearly demanded it.[46] That being so, the officer, pursuant to the statute, had the authority to search appellant and remove the revolver from his jacket.[47] The court rejected the notion, expressed in the earlier New York cases, that the constitutionality of the search authorized by the statute must hinge upon the distinction between a "frisk" and a "search." It pointed out that although in prior cases convictions were affirmed upon findings that frisks, rather than searches, had been made, the factual situations actually supported a contrary conclusion.[48] In other words, the conduct permitted by the statute need not, either by the language of the statute itself or by prior case law, be limited to a patting of the exterior of one's clothing. The majority did suggest, however, that barring unusual circumstances such as were present in the instant case, where a preparatory frisk would have been unduly dangerous to both the officer and the children in the area, the search allowed by section 180-a should be limited to a frisk.[49]

In a concurring opinion[50] Judge Van Voorhis stressed the need for police action where the circumstances pose a threat of serious harm to human lives. In such situations the substitution of the standard "reasonable suspicion" for "probable cause" is entirely proper. The instant case falls well within this

41. *Id.*
42. 180 F. Supp. 71 (S.D.N.Y. 1960).
43. *Id.* at 78.
44. People v. Taggart, 20 N.Y.2d at 337, 229 N.E.2d at 582, 283 N.Y.S.2d at 3.
45. *Id.* at 337, 339, 229 N.E.2d at 582, 584, 283 N.Y.S.2d at 3, 5.
46. *Id.* at 341, 229 N.E.2d at 584, 283 N.Y.S.2d at 6.
47. *Id.* at 341, 229 N.E.2d at 585, 283 N.Y.S.2d at 8.
48. *Id.* at 342, 229 N.E.2d at 586, 283 N.Y.S.2d at 8.
49. *Id.* at 342-43, 229 N.E.2d at 586, 283 N.Y.S.2d at 8.
50. *Id.* at 343, 229 N.E.2d at 587, 283 N.Y.S.2d at 9.

category;[51] a loaded revolver is obviously a potentially dangerous object. He suggested, however, that since the sole justification for the search under the New York statute is the possibility of harm to the officer from a concealed weapon upon the person being detained, such person should be neither arrested nor convicted unless the fruits of the search are in fact a weapon. Although concurring in the decision here, he disagreed with the decisions in the *Sibron* and *Peters* cases.[52]

Chief Judge Fuld, dissenting,[53] stated that "settled constitutional doctrine" demands a finding of probable cause in order to sustain the validity of a search and seizure. Probable cause being absent (as was conceded by the majority), the search and seizure were constitutionally prohibited. The dissent recognized the duty of the officer, under these facts, to stop and question the appellant, but rejected the majority's finding that the imminency of danger required the officer to search the defendant. He maintained that such police action must be limited to situations involving either probable cause or immediate and grave danger to human life, neither of which, he believed, was present in the instant case.[54]

It is apparent that the scope of permissible police activity authorized by section 180-a is extended by this decision. In *Rivera*, *Peters*, and *Sibron* the majority concluded that the "search" permitted by section 180-a is limited to a frisk. The statute, as construed here, authorizes not only a frisk, but, under certain circumstances, an actual search of a suspect as well. In effect, then, the court held that under the New York statute, probable cause is not necessary for every lawful search and seizure. The instant case presents a problem with which the courts have been struggling for some time. That there is a need for greater efficiency in the area of law enforcement and greater protection for law enforcement officers cannot be denied. Such needs, however, may not be used to justify an abrogation of constitutional requirements. To do so is to undermine the very safety and security which is sought to be protected. Nevertheless, as we are reminded in *Rivera*, the constitutional prohibitions against search and seizure extend only to unreasonable ones, and what is reasonable is largely determined by balancing the competing interests.[55] The New York statute, when properly limited, appears to be a rational and sorely needed compromise between these interests. The stopping of an individual for a brief period of investigation is a necessary and relatively harmless exercise of police power. Without this authority the ability of police officers to inquire into suspicious activity would be seriously affected. The argument that a "stop" is significantly different than an "arrest" has merit, and finds ample support in both the

51. *Id.* at 343-44, 229 N.E.2d at 587, 283 N.Y.S.2d at 9.
52. *Id.* at 344, 229 N.E.2d at 587, 283 N.Y.S.2d at 10.
53. *Id.*
54. *Id.* at 345, 229 N.E.2d at 588, 283 N.Y.S.2d at 11.
55. People v. Rivera, 14 N.Y.2d at 441, 201 N.E.2d at 36, 252 N.Y.S. at 462.

cases[56] and the literature.[57] It follows, therefore, that a showing of probable cause should not be necessary in order to justify a "stop." The distinction made in the earlier New York cases between a "frisk" and a "search," however, is at best tenuous; it is " 'The slightest touching' which is condemned . . . this is . . . as objectionable . . . in the one case as in the other."[58] Still, if we are to recognize the duty of an officer to inquire into suspicious activity, we must also recognize the dangers involved, and provide him with procedures whereby he can reduce these dangers. The frisk is just such a procedure. Critics of section 180-a argue that the standard of "reasonable suspicion" has not the same capacity for objectivity as had "probable cause."[59] It follows that since the standard, by its very nature, is not susceptible to objective judicial testing, the legality of police action founded upon "a reasonable suspicion" will likewise be incapable of testing. The end result will be police conduct free from any judicial restraint. It is submitted that this argument ignores the realities of any legal standards which incorporate the concept of "reasonableness." It is doubtful that anyone would seriously contend that either "reasonable suspicion" or "probable cause (reasonable belief)," by themselves, possess any meaningful degree of objectivity. What makes "probable cause" a judicially workable standard is the many previous court decisions declaring which factual situations are, and which are not, sufficient to constitute probable cause. The difficulties that critics have with the standard of "reasonable suspicion" arise only because, as yet, the law in this area is undeveloped—the standard has only recently been introduced into American courts.[60] Once developed, there will of course be cases which fall near the perimeter of the standard. Such cases will be no more troublesome than are those arising under the already established standard of probable cause—a standard with which the courts have been working effectively.

The more frequent objection to the New York statute,[61] and one with more substance, is that it authorizes the search of an individual in the absence of probable cause. The fear is that under pretense of a "reasonable suspicion of personal danger," police will engage in indiscriminate searches of persons in order to obtain evidence of unlawful activity, and will then invoke the statute to avoid the exclusionary rule of *Mapp*. The danger of abuse, although very real, can be reduced by eliminating the incentive for abuse. The ex-

56. *See* cases cited in *supra* notes 38, 10, 11.

57. *See* Kuh, *Reflections on New York's "Stop and Frisk" Law and Its Claimed Unconstitutionality*, 56 J. Crim. L., C., & P.S. 32 (1965); Leagre, *supra*, note 37; Ronayne, *The Right to Investigate and New York's "Stop and Frisk" Law*, 33 Fordham L. Rev. 211 (1964); *but see* Foote, *The Fourth Amendment: Obstacle or Necessity in the Law of Arrest*, 51 J. Crim. L., C., & P.S. 251 (1966).

58. People v. Rivera, 14 N.Y.2d at 445, 201 N.E.2d at 37, 252 N.Y.S.2d at 463 (dissenting opinion of Fuld, J.).

59. Schwartz, *supra* note 11, at 447-48; *see also* Foote, *supra* note 57, at 403-05.

60. The standard of "reasonable suspicion" has been in existence since early English common law. J. Hale, Pleas of the Crown 88, 97 (C. Wilson ed. 1800).

61. J. Skolnick, Justice Without Trial, 212-19 (1966).

clusionary rule was formulated in order to discourage police from engaging in searches in the absence of probable cause. By ruling that evidence so obtained could not be admitted at a trial against the person from whom it was seized, the Supreme Court effectively curtailed such police conduct. Similarly, if the courts, where a search pursuant to section 180-a is involved, were to limit the objects which could be admitted into evidence to weapons only, as Judge Van Voorhis suggested,[62] they would eliminate much of the incentive to misuse the powers granted by the statute. Without this limitation, the fourth amendment will be denied effect.[63]

HARVEY M. PULLMAN

EVIDENCE—MEDICAL TREATISES TO BE ADMITTED AS INDEPENDENT EVIDENCE AS AN EXCEPTION TO THE HEARSAY RULE

Plaintiff and defendant were the drivers of two automobiles involved in an accident. As a result of the accident, an operation known as ankylosis had to be performed on the plaintiff at which time two ruptured discs from his spine were removed and the vertebrae fused together with bone from the hip. The plaintiff brought an action to recover damages for the personal injuries sustained. At the trial, plaintiff's medical expert testified on direct examination that in his opinion the operation resulted in a permanent twenty per cent impairment of the spine and ten per cent disability of the whole body generally. On cross examination, plaintiff's expert was asked if he were familiar with the American Medical Association's *Guide to the Evaluation of Permanent Impairment of the Extremities and Back*.[1] He replied in the affirmative, but that he had not consulted the *Guide* in making his own estimate of the disability and that he was not familiar with what the *Guide* set for the operation. Defense counsel then asked his own medical expert if he knew what standard of disability the *Guide* set for ankylosis of two vertebrae. Plaintiff's objection to this question was sustained on the ground that to admit the contents of the *Guide* directly would violate the hearsay rule, and since plaintiff's medical expert testified that he had not consulted the *Guide* in making his estimate of disability, the proper basis for admitting the contents of the *Guide* to impeach plaintiff's expert did not exist. There was a verdict and judgment for plaintiff on the negligence issue and the defendant appealed, assigning the trial court's refusal to allow defendant's expert to answer the disputed question as one source of error. *Held,* by the Wisconsin Supreme Court, it was

62. People v. Taggart, 20 N.Y. at 344, 229 N.E.2d at 587, 283 N.Y.S.2d at 9 (concurring opinion of Van Voorhis, J.).

63. Silver Rome Lumber Co. v. United States, 251 U.S. 385, 392 (1920) (Holmes, J.).

1. J.A.M.A. (spec. ed. Feb. 15, 1958) [hereinafter cited as *Guide*]. The *Guide*, a collection of percentage disability tables based on objective measurements of restriction of motion, sets limits of 3 to 7 per cent spinal impairment and 2 to 4 per cent overall bodily impairment for ankylosis of any two cervical vertebrae. *Guide* 89, 103.