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Alabama v. White: Anonymous Tip Held Sufficient Basis for Investigatory Stop under Fourth Amendment, 24 J. Marshall L. Rev. 909 (1991)

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*ALABAMA V. WHITE:** ANONYMOUS TIP HELD SUFFICIENT BASIS FOR INVESTIGATORY STOP UNDER FOURTH AMENDMENT

The fourth amendment to the United States Constitution guarantees a person's right to be free from unreasonable seizures by the federal government.[1] The Supreme Court has interpreted this guarantee to be enforceable against the states through the due process clause of the fourteenth amendment.[2] Further, the Supreme Court has held that the fourth amendment's guarantee against un-

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* 110 S. Ct. 2412 (1990).

1. U.S. CONST. amend. IV., states:

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

2. Mapp v. Ohio, 367 U.S. 643, 655 (1961). *See generally* Wolf v. Colorado, 338 U.S. 25 (1949)(fourth amendment's right to privacy was extended to the states through the fourteenth amendment, but the exclusionary rule was not). *See generally,* R. CUSHMAN, CASES IN CONSTITUTIONAL LAW 321-28 (6th ed. 1984) (editorial comments on the relation between *Mapp* and *Wolf*).

In *Wolf*, the Court extended the fourth amendment's right to privacy to the states through the due process clause of the fourteenth amendment, but refused to extend the exclusionary rule to the states. *Wolf*, 338 U.S. at 25. The exclusionary rule, as established in Weeks v. United States, 232 U.S. 383 (1914), prohibited the use in federal court of evidence seized in violation of the fourth amendment's proscription against unreasonable searches and seizures. The rule arose "because of the inability of other sanctions to halt improper police conduct." Comment, *The Outwardly Sufficient Search Warrant Affidavit: What If It's False?*, 19 UCLA L. REV. 96, 114 (1971). In effect, therefore, the *Wolf* Court recognized the right to be free from arbitrary intrusion by the state police, but refused to enforce that right. J. INCIARDI, CRIMINAL JUSTICE 239 (2d ed. 1987). The *Mapp* Court, however, decided that for reasons of judicial integrity it could no longer allow the right to privacy to be "an empty promise," and held that evidence obtained through an illegal search and seizure also is "excluded" from use in state trials. *Mapp*, 367 U.S. at 660.

Opposition to the *Mapp* decision was strong both outside and within the Court. J. INCIARDI, *supra* at 241. Outraged police across the nation felt they were being deprived of their legal right to search for and obtain evidence. *Id.* at 241-42 (citing NIEDERHOFFER, BEHIND THE SHIELD at 159 (Doubleday 1967)). Within the Court, Justices Harlan, White, Blackmun, and Burger, who became Chief Justice in 1964, all wanted to modify, if not abolish the rule. *Id.* at 243; B. WOODWARD & S. ARMSTRONG, THE BRETHREN: INSIDE THE SUPREME COURT 131-36 (1979) [hereinafter THE BRETHREN]. Justices Marshall, Brennan, and Douglas were the rule's strongest supporters. J. INCIARDI, *supra* at 244.

By 1971, fearing that both *Mapp* and the original 1914 *Weeks* decision might be overturned, Justices Brennan and Marshall instructed their clerks not to recommend granting certiorari in fourth amendment cases unless the police vi-

reasonable seizures applies to investigatory stops.[3] An investigatory stop, or *Terry* stop, occurs when an officer "seizes" an individual on less than probable cause in order to investigate possible criminal activity.[4]

The law of the fourth amendment, however, is not the

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olation was flagrant. THE BRETHREN, *supra* at 131-32. This merely put off the inevitable.

In United States v. Calandra, 414 U.S. 338 (1974), the Court held the exclusionary rule inapplicable in grand jury proceedings. In United States v. Leon, 468 U.S. 897 (1984), the Court established the "good faith" exception to the exclusionary rule whereby evidence obtained under a search warrant later determined to be inadequate is admissible if the officer relied on the warrant in good faith. *Id.* For recent decisions continuing the move away from the exclusionary rule, see *infra* note 9.

In *Alabama v. White*, the Court prevents the operation of the exclusionary rule by lowering the standard for reasonableness under the fourth amendment. *See infra* notes 60-67 and accompanying text for a discussion of this issue. "Where this free-floating creation of reasonable exceptions to the warrant requirement will end, now that the Court has departed from the balancing approach that has long been part of our fourth amendment jurisprudence, is unclear." Illinois v. Rodriguez, 110 S.Ct. 2793 (1990) (Justices Marshall, Brennan, and Stevens dissenting). *See generally* Comment, *Judicially Required Rulemaking as Fourth Amendment Policy: An Applied Analysis of the Supervisory Power of Federal Courts*, 72 NW. U.L. REV. 595 (1977) (discussion of benefits of judicially required rulemaking by law enforcement as a means of dealing with the inadequacies of the exclusionary rule).

An interesting side-note is that Dollree Mapp's legal troubles did not end when her conviction was overturned on the grounds of illegal search and seizure. J. INCIARDI, *supra* at 262. In 1970, officers searched Ms. Mapp's home, this time pursuant to a search warrant, and discovered 50,000 envelopes of heroin and over $100,000 worth of stolen property. *Id.* She was convicted of felonious possession of dangerous drugs and sentenced to 20 years to life. *Id.* Throughout her trial, Ms. Mapp argued that the search warrant was illegal, but to no avail. *Id.* On December 31, 1980, her sentence was commuted by the governor of New York and she was eligible for parole the next day. *Id.*

3. Terry v. Ohio, 392 U.S. 1, 16 (1967).

4. *Id.* A stop of a vehicle is an investigatory stop. United States v. Cortez, 449 U.S. 411, 417 (1981). This type of conduct "must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." *Terry*, 392 U.S. at 20. (quoting Leagre, *The Fourth Amendment and the Law of Arrest*, 54 CRIM. L.C. & P.S. 393, 396-403 (1963)). A person need not be taken to the police station and prosecuted for a crime before the fourth amendment is implicated. *Id.* at 16. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to "walk away," he has seized that person. *Id.*

"The practice of stop and frisk, of course, is by no means new." LaFave, *"Street Encounters" and the Constitution: Terry, Sibron, Peters, and Beyond*, 67 MICH. L. REV. 40, 42-43 (1968) (discussion of all aspects of investigatory detentions). "It is a time-honored police procedure for officers to stop suspicious persons for questioning and, occasionally, to search these persons for dangerous weapons." *Id.* at 42. The *Terry* Court made it clear that it did not retreat from its previous holdings that police "whenever practicable [must] obtain advance judicial approval of searches and seizures through the warrant procedure, [citations omitted], or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances." *Terry*, 392 U.S. at 20 (citing Warden v. Hayden, 387 U.S. 294 (1967) (hot pursuit). *Cf.* Preston v. United States, 376 U.S. 364, 367-68 (1964)).

Supreme Court's most clear and consistent product.[5] A debate has raged for at least eighteen years over whether an anonymous tip can be sufficiently reliable to justify a *Terry* stop.[6] In *Alabama v. White*,[7] the Supreme Court confronted this issue for the first time.[8] Unfortunately, in its rush to establish that an anonymous tip may be the basis for such a stop, the Court severely undermined the fourth amendment's proscription against unreasonable searches and seizures and "lower[ed] even further the constitutional barriers that separate a free society from a police state."[9]

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5. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349 (1974) (excerpted from the Oliver Wendell Holmes Lectures, this article is Justice Holmes' perspective on the inconsistency in the Supreme Court's fourth amendment jurisprudence).

6. The practice of the police to stop and frisk "suspicious" persons on the street was officially recognized as a legitimate police power in *Terry*. *Terry*, 392 U.S. at 10. The *Terry* Court assumed that the basis of the information that the suspects were acting suspicious was reliable because a veteran officer witnessed the behavior. *Id.* at 5. In Adams v. Williams, 407 U.S. 143 (1972), the Court expanded investigative stops to include situations in which the officer was not the one who personally observed the conduct. *Id.* at 145-47. *See also* United States v. Aldridge, 719 F.2d 368, 371 (11th Cir. 1983). Since *Adams*, commentators have questioned just how reliable the basis of the information has to be and whether an anonymous tip could be held sufficiently reliable to justify an investigatory stop. *See generally* Comment, *Stop and Frisk in New York: Fleeing Suspects and Anonymous Tips*, 12 FORDHAM URB. L.J. 383, 397-404 (1984) (anonymous tips which predict "dangerous criminal activity" should be used whether or not the tip is detailed); Note, *The Supreme Court, 1971 Term: Search and Seizure, Police Power to Stop and Frisk*, 86 HARV. L. REV. 171, 179 n.35 (1972) (anonymous tip may be enough to permit a stop if officer proceeds to scene and finds suspect); LaFave, *supra* note 4, at 77-78 (discussion of the inherent unreliability of anonymous tips); Comment, *Stop and Frisk Based Upon Anonymous Telephone Tips*, 39 WASH. & LEE L. REV. 1437 (1982) (police should proceed with investigation based on anonymous telephone tip if informant alleges serious crime, informant provides sufficient detail, and police corroborate tip) [hereinafter Comment, *Stop And Frisk*].

7. 110 S. Ct. 2412 (1990).

8. The Supreme Court twice before denied certiorari on the issue of whether an anonymous tip may be the basis for an investigatory stop. White v. United States, 454 U.S. 924 (1981) (White, J., dissenting from denial of certiorari); Jernigan v. Louisiana, 446 U.S. 958 (1980) (White, J., dissenting from denial of certiorari). In both *White* and *Jernigan*, Justices Marshall and Brennan joined Justice White's dissents. However, in *Alabama v. White*, Justice White wrote the majority opinion while Justices Brennan and Marshall remained in the dissent. *Alabama v. White*, 110 S. Ct. at 2414.

9. United States v. Alvarez, 899 F.2d 833, 840 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 671 (1991) (Reinhardt, C.J., dissenting). Other recent decisions in which the Court has upheld police actions against fourth amendment challenges include: Florida v. Jimeno, 111 S. Ct. 1801 (1991) (person's fourth amendment right to be free from unreasonable searches not violated when he gives officer permission to search his vehicle and officer opens closed container within car which might reasonably hold object of search, because it is objectively reasonable for officer to believe that scope of suspect's consent extended to container); Illinois v. Rodriguez, 110 S. Ct. 2793 (1990) (police merely need reasonable belief that third party has common authority over premises to justify warrantless entry and search after third party gives his consent to the search); Michigan State Police v. Sitz, 110 S. Ct. 2481 (1990) (privacy rights of

On April 22, 1987, a Montgomery police officer received an anonymous telephone tip[10] that Vanessa White ("White") would be leaving the 235-C Lynwood Terrace Apartments at a particular time[11] in a brown Plymouth station wagon with a broken right taillight.[12] The caller further stated that White would be going to Dobey's Motel and would be in possession of about an ounce of cocaine inside a brown attache case.[13]

After the call, the officer and his partner proceeded to the apartment complex and verified that there was a brown Plymouth station wagon with a broken right taillight parked in front of the 235 building.[14] Subsequently, the officers observed a woman leave the 235 building and enter the station wagon.[15] She was not carrying anything in her hands.[16] The officers followed the woman, whom they later identified as White, to the Mobile Highway, the highway off of which Dobey's Motel is located.[17] The officers radioed ahead to have a patrol unit stop White's vehicle before it reached the motel.[18] After stopping White, the officers asked her to step to the rear of the vehicle where they informed her she was suspected of carrying cocaine.[19] The officers asked permission to search the car for cocaine and White consented.[20] Inside a locked[21]

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motorists not violated in drunk driving check points); Horton v. California, 110 S. Ct. 2301 (1990) (inadvertence is not a necessary condition for lawful "plain view" seizure); Maryland v. Buie, 110 S. Ct. 1093 (1990) (officers merely need reasonable suspicion to conduct a "protective sweep" of a suspect's home); California v. Greenwood, 486 U.S. 35 (1988) (no objectively reasonable expectation of privacy in one's garbage).

10. From early times law enforcement authorities have utilized informers. *See generally* Donnelly, *Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs*, 60 YALE L.J. 1091 (1951) (a historical discussion of informants and their reliability and motivations). Comment, *Stop and Frisk*, *supra* note 6, at 1437 (a discussion of the possible use of anonymous informant tips if the crime alleged is sufficiently serious).

11. "[N]o specific time, stated by the informer, is revealed in the record and there is no testimony that she left at the time or near the time specified by the informer." White v. State, 550 So. 2d 1074, 1079 (1989), *cert. denied*, 550 So. 2d 1081 (Ala. 1989), *rev'd.*, 110 S. Ct. 2412 (1990), *aff'd by* 571 So. 2d 400 (Ala. App. 1991). For a discussion of the relevance of the "time of departure" as it relates to the "indicia of reliability," see *infra* notes 82-84 and accompanying text.

12. *Alabama v. White*, 110 S. Ct. at 2414.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* White was stopped in front of the Jet Drive Inn Theatre, some 300 yards south of Dobey's Motel. Brief for Respondent at 3, Alabama v. White, 110 S. Ct. 2412 (1990) (No. 89-789).

19. *Alabama v. White*, 110 S. Ct. at 2415.

20. *Id.* For a discussion of the consequences of the Court's refusal to address the issue of whether the officers went beyond maintaining the status quo and, therefore, required probable cause, see *infra* note 39.

brown attache case,[22] the officers discovered marijuana[23] and placed White under arrest.[24] After taking White to police headquarters, the officers discovered three milligrams of cocaine in her purse.[25]

The trial court denied White's suppression motion and sentenced her to two years in prison for possession of marijuana and possession of cocaine.[26] On appeal,[27] a unanimous Alabama Court of Criminal Appeals reversed.[28] The Court of Criminal Appeals held that the vaguely corroborated anonymous tip which consisted mostly of "easily known details" was insufficient[29] to justify the investigatory stop.[30]

The United States Supreme Court granted certiorari[31] in an attempt to resolve the "conflict and confusion" in the state[32] and fed-

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21. White gave the officers the combination upon request. *Alabama v. White,* 110 S. Ct. at 2415.

22. The patrolman testified he saw the brown attache case on the front seat next to the driver. Officer Davis, however, testified that the attache case was on the backseat. *White v. State,* 550 So. 2d at 1075.

23. The officers also found empty plastic bags and small manilla envelopes. Respondent's Brief, *supra* note 18, at 4. White told the officers that "she had forgotten that the marijuana was in the briefcase and that she used to sell it, but had not done so in a while." *Id.*

24. *Alabama v. White,* 110 S. Ct. at 2415.

25. *Id.* White explained that the powder in her purse was "cut" and that "she used that to replace cocaine that she took from packages that she would obtain for other individuals." Respondent's Brief, *supra* note 18, at 4.

26. White was indicted for possession of marijuana and possession of cocaine in violation of ALA. CODE § 20-2-70 (1975). Respondent's Brief, *supra* note 18, at 1. At trial, White pleaded not guilty and filed a motion to suppress the marijuana and the cocaine. *Alabama v. White,* 110 S. Ct. at 2415. After a hearing and denial of her motion to suppress, White pleaded guilty to the charges, but expressly reserved her right to raise on appeal the issue of the trial court's denial of her suppression motion. *Id.* White's sentence was suspended and she was placed on two years probation. *Id.*

27. White v. State, 550 So. 2d 1074 (Ala. 1989).

28. *Id.* at 1080.

29. The police observed a woman leave the general area of the 235 building, enter a described vehicle, and drive in the general direction of a specified location. *Id.* at 1079. The Alabama Court of Criminal Appeals reasoned that:

> In this case, the corroboration was so slight that it created no justification for believing that the informant was 'relying on something more substantial than a casual rumor.' Spinelli v. United States, 393 U.S. 410, 416, 89 S.Ct. 584, 589, 21 L.Ed.2d 637 (1969). Reasonable suspicion requires more than this minimal corroboration of innocent details. *See* United States v. DeVita, 526 F.2d 81 (9th Cir. 1975) (per curiam).

Id. at 1079 (citing United States v. McLeroy, 584 F.2d 746, 748 (5th Cir.1978)).

30. White v. State, 550 So. 2d at 1080. The Supreme Court of Alabama denied the State's petition for writ of certiorari. White v. State, 550 So. 2d 1081 (1989) (Maddox, J. and Steagall, J., dissenting).

31. Alabama v. White, 110 S. Ct. 834 (1990).

32. State courts have split over whether an anonymous tip is sufficient to justify an investigatory stop. For state courts holding that an anonymous tip can be the basis for a stop, see Henighan v. United States, 433 A.2d 1059 *vacated,* 495 A.2d 1134 (D.C. App. 1981) (innocent details from anonymous tip need not re-

eral[33] courts over whether an anonymous tip may furnish reasonable suspicion for an investigatory stop.[34] In a six to three decision,[35] the Court held that under the totality of the circum-

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flect criminal conduct to establish probable cause where police must respond to rapidly developing situations); State v. Kea, 61 Haw. 566, 606 P.2d 1329 (1980) (police corroboration of innocent details of anonymous tip sufficient to establish reasonable suspicion to "stop and frisk" suspect); People v. Fernandez, 58 N.Y.2d 791, 459 N.Y.S.2d 256, 445 N.E.2d 639 (1983) (tip relayed to officers that man had gun in rolled up white shirt provided reasonable suspicion even though there were inconsistencies as to corroborated elements of tip); People v. McLaurin, 43 N.Y.2d 902, 403 N.Y.S.2d 720, 374 N.E.2d 614 (1978) (anonymous tip received by police, then relayed to officer that man with limp, wearing red jacket and sneakers was armed held sufficient to establish reasonable suspicion justifying stop); People v. Kinlock, 43 N.Y.2d 832, 402 N.Y.S.2d 573, 373 N.E.2d 372 (1977) (anonymous telephone call sufficient to establish reasonable suspicion after police corroboration); Mann v. State, 525 S.W.2d 174 (Tex. Crim. App. 1975) (anonymous tip from hitchhikers that three men in car of specified description were planning to commit burglary held sufficient to establish reasonable suspicion to stop suspects).

For state courts holding anonymous tips insufficient to establish reasonable suspicion, see Commonwealth v. Anderson, 481 Pa. 292, 392 A.2d 1298 (1978) (officers who corroborated innocent details of tip which alleged suspect had escaped from a rehabilitation center lacked reasonble suspicion to "stop and frisk" suspect); Ebarb v. State, 598 S.W.2d 842 (Tex. Crim. App. 1980) (officers lacked "specific articulable facts" necessary to justify stop of suspect); State v. Sieler, 95 Wash. 2d 43, 621 P.2d 1272 (1980) (en banc) (police observation of described vehicle at specified location was insufficient to establish reasonable suspicion to stop occupants).

33. The federal courts have also taken different positions on the reliability of anonymous informants. For federal courts finding reasonable suspicion, see, e.g., United States v. Alvarez, 899 F.2d 833 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 671 (1991); United States v. Gardner, 887 F.2d 1088 (6th Cir. 1989) (Table, Text in Westlaw, No. 88-6370, Genfed library); United States v. McBride, 801 F.2d 1045 (8th Cir. 1986), *cert. denied* 479 U.S. 1100 (1987); United States v. Nargi, 732 F.2d 1102 (2d Cir. 1984); United States v. Aldridge, 719 F.2d 368 (11th Cir. 1983). For federal courts finding anonymous tips insufficient to establish reasonable suspicion, see, e.g., United States v. McLeroy, 584 F.2d 746 (5th Cir. 1978); United States v. Robinson, 536 F.2d 1298 (9th Cir. 1976).

34. *Alabama v. White*, 110 S. Ct. at 2415.

The State of Alabama, the petitioner, phrased the issue: "May a valid investigatory stop be made under the Fourth Amendment on reasonable suspicion based on a largely verified anonymous tip, even if the same does not meet the standards for probable cause set by Aguilar v. Texas, 378 U.S. 108 (1964)?" Brief of Petitioner at i, Alabama v. White, 110 S. Ct. 2412. (1990) (No. 89-789).

The respondent, Vanessa White, asked, "To what degree may a police officer rely upon an anonymous tip in forming the reasonable, articulable suspicion necessary to justify an investigatory stop?" Respondent's Brief, *supra* note 18, at i. White also presented a second question: "Whether the stop of Vanessa White extended beyond a determination of identity or the maintenance of the status quo and thus resulted in an arrest which required probable cause." *Id.* The Court did not address this second issue. For a discussion of this issue and the consequences of the Court's failure to address it, *see infra* note 39. *See also* Respondent's Brief, *supra* note 18, at 30-32 (stop of White's car went beyond investigatory stop to the point of an arrest requiring probable cause).

35. Justice White delivered the opinion of the Court, in which Chief Justice Rehnquist, and Justices Blackmun, O'Connor, Scalia and Kennedy joined. Justice Stevens filed a dissenting opinion, in which Justices Marshall and Brennan joined.

stances,[36] the anonymous tip, as corroborated, exhibited sufficient indicia of reliability[37] to justify the stop of White's car.[38]

The Court defined the general issue to be whether an anonymous tip may furnish reasonable suspicion for a stop.[39] The Court concluded that, if the police corroborate significant details of the tip, an anonymous caller could supply the reasonable suspicion necessary for a *Terry* stop.[40] In reaching this conclusion, the Court merged the holdings in two of its most controversial search and seizure decisions: *Adams v. Williams*[41] and *Illinois v. Gates*.[42]

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36. *See infra* note 45 for a discussion of the difference between the "totality of circumstances" test for reasonable suspicion and the "two-pronged" test of *Aguilar/Spinelli*.

37. The Court has never given a clear indication of exactly what qualifies as "indicia of reliability." Note, *supra* note 6, at 178-79 (discussion and criticism of the indicia of reliability test as utilized in Adams v. Williams, 407 U.S. 143 (1972)). For a discussion of the inherent weakness of the "indicia of reliability" test, see *infra* notes 68-91 and accompanying text.

38. *Alabama v. White*, 110 S. Ct. at 2415. Accordingly, the Court reversed the judgment of the Alabama Court of Criminal Appeals and remanded for further proceedings. *Id.*

39. *Id.* Phrasing the issue as whether an anonymous tip can provide the reasonable suspicion necessary for an investigatory stop served a two-fold purpose. First, it established that, as far as the Majority is concerned, investigatory stops, whether based on known or unknown informant tips, are governed by reasonable suspicion and not by probable cause. Second, by framing the issue the way it did, the Court unceremoniously discarded one of White's contentions without analysis. White had argued that the stop extended beyond a determination of identity or maintenance of the status quo, and thus resulted in an arrest which required probable cause. Respondent's Brief, *supra* note 18, at 30-32.

Based on prior case law, White's argument is convincing. According to Adams v. Williams, 407 U.S. 143, 146 (1972) "a brief stop of a suspicious individual" is permitted "in order to determine his identity or mantain the status quo momentarily." In *Alabama v. White*, however, the officers immediately had White step to the rear of the vehicle and never asked her for her name "to determine [her] identity." *Alabama v. White*, 110 S. Ct. at 2415. The officers also did not ask White where she was going nor if she had a brown attache case in order to further verify the tip. *Id.* As a result of the Court's refusal to address this issue, not only has the standard required for an investigatory stop been lowered, but *the permissable scope of such a stop once it is made has been expanded without reasoned analysis or precedential support.*

The Supreme Court accepted the case, however, to determine the sole issue whether an anonymous tip may furnish reasonable suspicion for an investigatory stop. *Id.* The issue presented would not have been settled had the Court decided that the conduct of the police here rose to the level of an arrest requiring probable cause.

40. *Alabama v. White*, 110 S. Ct. at 2417.

41. Adams v. Williams, 407 U.S. 143 (1972). *See generally* Comment, *Criminal Procedure - Stop and Frisk: Warrantless Car Searches* - Adams v. Williams, *407 U.S. 143 (1972), 50* DEN. L. REV. 243 (1973) (analysis of *Adams* in relation to previous case law); *Note*, *supra* note 6, at 178-79 (criticism of the *Adams* Court's reasoning); Comment, *The Informant's Tip and Terry's "Reasonable Conclusion" - A Modified Standard*, 4 TEX. TECH L. REV. 167 (1972) (criticism of *Adams*).

42. Illinois v. Gates, 462 U.S. 213 (1983). *See generally* Comment, *Anonymous Tips, Corroboration, and Probable Cause: Reconciling the* Spinelli/Draper *Dichotomy in* Illinois v. Gates, 20 AM. CRIM. L. REV. 99 (1982) (absent corrobo-

First, the Court acknowledged the *Adams* holding that an officer could base a "reasonable investigatory stop"[43] on an unverified, known informant's tip if the tip were surrounded by sufficient "indicia of reliability."[44] Second, the Court recognized the *Gates* holding that, under the totality of the circumstances[45] test for probable cause, a search warrant[46] could be issued based on a significantly corroborated anonymous tip.[47] The *Gates* Court stressed

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ration of incriminating details the search warrant in *Gates* should not have been issued).

43. *Adams*, 407 U.S. at 146.

44. *Alabama v. White*, 110 S. Ct. at 2415. In *Adams*, a police sergeant was on patrol at 2:15 a.m. in a high crime area when a person he knew approached his cruiser and informed him that an individual in a nearby car was in possession of narcotics and had a gun at his waist. *Adams*, 407 U.S. at 144-45. The officer approached the individual's car and tapped on the window. *Id.* at 145. When Williams rolled down the window, the officer reached inside and removed a revolver from Williams' waistband. *Id.* A subsequent search incident to Williams's arrest uncovered substantial quantities of heroin. *Id.* The *Adams* Court held that the information had sufficient "indicia of reliability" to justify the forcible stop of Williams. *Id.* at 147. The *Adams* Court did not address the issue of anonymous tips, except to say that a known informant provides a "stronger case than obtains in the case of an anonymous telephone tip." *Id.* at 146.

45. The *Gates* Court abandoned the *Aguilar/Spinelli* "two-pronged" test for probable cause in favor of a totality of the circumstances approach. *Gates*, 462 U.S. at 237.

A "two-pronged" test for determining probable cause under the fourth amendment based on an unidentified anonymous informant's tip was set forth in Aguilar v. Texas, 378 U.S. 108, 114 (1964). The test required that the magistrate be informed of the "basis of knowledge" of the informant, and the "credibility" or "reliability" of the informant. *Id.* at 114. In Spinelli v. United States, 393 U.S. 411 (1969), surveillance of "seemingly innocent conduct" of the defendant corroborated much of the anonymous informant's tip. The *Spinelli* Court, in delineating how the "two-pronged" *Aguilar* test should be applied in such a situation, held the officer's affidavit inadequate under the *Aguilar* factors. *Id.* at 417.

The *Gates* Court, however, recognized, that "the strictures that inevitably accompany the 'two-pronged test' cannot avoid seriously impeding the task of law enforcement." *Gates*, 462 U.S. at 237. Therefore, the *Gates* Court modified the "inflexible" *Aguilar/Spinelli* test and utilized a "totality of the circumstances" analysis. *Id.* at 230-39. The *Gates* Court emphasized that under the totality of the circumstances, the informant's "veracity," "reliability" and "basis of knowledge" which were critical under *Aguilar/Spinelli* remain "highly relevant in determining the value of [the informant's] report." *Id.* *See generally* Comment, *Informer's Word as the Basis For Probable Cause in the Federal Courts*, 53 CALIF. L. REV. 841 (1965) (pre-*Adams/Gates* discussion of *Aguilar* and the role informants play in the criminal justice system).

46. A search warrant is a written order which a magistrate issues directing a law enforcement officer to search a specified premises for stolen or unlawful goods, suspects, or fugitives and to bring them, if found, before a magistrate. J. INCIARDI, *supra* note 2, at 223. Probable cause is the reasonable belief that a crime has been or is being committed which arises from facts or apparent facts that are reliable. *Id.* at 223.

47. *Alabama v. White*, 110 S. Ct. at 2415. In *Gates*, an anonymous letter to the police stated that Mr. and Mrs. Gates were involved in the sale and the distribution of illegal drugs between Bloomingdale, Illinois and Florida. *Gates*, 462 U.S. at 225. The anonymous tip further stated that Mr. Gates would fly

that although an anonymous tip, standing alone, would lack the necessary "indicia of reliability," the significant corroboration by the police gave the tip the "something more" it required to justify the warrant.[48] Thus, by merging these two holdings,[49] the *White* Court concluded that an anonymous caller could supply the reasonable suspicion necessary for a *Terry* stop if the police corroborate significant aspects of the tip.[50]

Next, the Court addressed the specific issue of whether, under the totality of the circumstances, the anonymous tip in *White*, as corroborated, exhibited sufficient "indicia of reliability" to justify the stop of White's car.[51] By applying the reasoning of *Gates*[52] to the facts in *White*, the Court found that the informant's tip had a sufficient indicia of reliability to justify the stop.[53] The Court reasoned that the "independent corroboration by the police of significant aspects of the informer's predictions," such as the type of car White would drive and the building she would exit, imparted some degree of reliability to the other allegations.[54] The Court also emphasized the fact that the caller was able to predict the *future behavior* of White, specifically that she would shortly leave the building, get in the described vehicle, and drive the most direct route to the Dobey's Motel.[55] The Court concluded that significant

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down to Florida, spend one night, and then drive back in a car loaded with $100,000 worth of drugs in the trunk. *Id.* at 225. The police verified that Gates flew to Florida, spent the night and the following day began driving the most direct route back to Bloomingdale. *Id.* Based on these verified elements of the anonymous informant's tip, the police obtained a search warrant. *Id.* The *Gates* Court recognized that an anonymous tip, standing alone, seldom could demonstrate an informant's basis of knowledge or veracity. *Alabama v. White,* 110 S. Ct. at 2415; *Gates,* 462 U.S. at 227. Therefore, "something more" is required to supplement the tip, such as independent police investigation. *Gates,* 462 U.S. at 237-38. *See generally* Comment, *supra* note 42, at 99 (discussion of informant tips in contemplation of *Gates*).

48. *Gates,* 462 U.S. at 227-37.

49. The *Alabama v. White* Court stated that the same factors are relevant in the reasonable suspicion context as in the probable cause context but a "lesser showing [is] required to meet [the reasonable suspicion] standard." *Alabama v. White,* 110 S. Ct. at 2415.

50. *Id.* at 2415-16.

51. *Id.* at 2415.

52. The Court in *Gates* concluded that if "an informant is right about some things, he is more probably right about other facts" including the claim that the object of the tip is engaged in criminal activity. *Gates,* 462 U.S. at 244.

53. *Alabama v. White,* 110 S. Ct. at 2416-17. The Court reasoned, although the tip was not as detailed, and the corroboration not as complete, as in *Gates,* the tip was sufficient because the "required degree of suspicion was not as high." *Id.* at 2416.

54. *Id.* In *Gates,* the Court reasoned that corroboration of the letter's predictions that Mr. Gates would fly to Florida, that his car would be there waiting and that he would then drive back toward Bloomingdale, Illinois gave the tip a degree of "reliability." *Gates,* 462 U.S. at 244.

55. *Alabama v. White,* 110 S. Ct. at 2416. The *Gates* Court reasoned that the unusual travel plans of the Gates' were "future actions of third parties ordina-

aspects of the caller's predictions were verified and, therefore, under the totality of the circumstances the anonymous tip, as corroborated, exhibited sufficient indicia of reliability to justify the investigatory stop.[56]

While informant tips are important to effective law enforcement,[57] the Court's reasoning unnecessarily dilutes the protections afforded individuals under the fourth amendment. The Court's analysis should alarm all Americans for three reasons. First, the Court has lowered the standard required to find an officer's actions "reasonable" through the subtle manipulation of language. Second, by focusing on the subjective, outcome-determinative "indicia of reliability" test, the Court has disregarded its duty to balance the governmental interest in a seizure against the "cherished" fourth amendment right to privacy.[58] Third, even under this inherently biased "indicia of reliability" test, the Court needed to stretch the facts to fit its "unique" vision of the totality of the circumstances. Consequently, the Court has made it abundently clear that it will yield "to the demands of the police at the expense of individual rights."[59]

In determining whether the anonymous tip was sufficient under the circumstances of this case, the Court has lowered the standard needed to find "reasonableness" under the fourth amendment through the subtle manipulation of language. In *Terry v. Ohio*,[60] the Supreme Court established that, when assessing the "reasonableness" of an officer's conduct, a court must balance "the need to search [or seize] against the invasion which the search [or seizure] entails."[61] The *Terry* Court determined that for the gov-

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rily not easily predicted." *Gates*, 462 U.S. at 245. Since the informant had accurate information relating to the Gates' future behavior, the Court reasoned it was probable that he had a sufficient "basis of knowledge" concerning the Gates' illegal activity. *Id.* at 245-46.

56. *Alabama v. White*, 110 S. Ct. at 2416. The *Gates* Court held that under the totality of the circumstances a search warrant could be issued under the fourth amendment on the basis of a substantially corroborated anonymous tip. *Gates*, 462 U.S. at 245-46.

57. *See generally* Comment, *supra* note 45, at 840. (problems generated by the invocation of the informer's privilege). For law review articles discussing the use of informants, see *supra* note 10.

58. An investigatory stop is reasonable when the governmental interest in conducting an investigation outweighs the constitutionally protected privacy interest of the citizen. Terry v. Ohio, 392 U.S. 1, 21 (1967).

59. Oberman and Finkel, *The Constitutional Arguments Against "Stop and Frisk"* 3 CRIM. L. BULL. 441, 446 (1967) (the Oberman and Finkel article is the full text of the petitioner's brief in the United States Supreme Court case, Sibron v. New York, 392 U.S. 40 (1967)).

60. Terry v. Ohio, 392 U.S. 1 (1967).

61. *Terry*, 392 U.S. at 21 (citing Camara v. Municipal Court, 387 U.S. 523, 534-35, 536-37 (1967)). Of course, one general societal interest is that of effective crime prevention and detection balanced against the citizen's fourth amendment right to privacy. *Id.* at 22-25.

ernmental interest to outweigh an individual's right to privacy the officer "must be able to point to specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."[62] The *Terry* Court vehemently stated that "[a]nything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches."[63]

The *White* Court, however, purporting to follow the *Terry* reasoning, stated that "[t]he officer [making a *Terry* stop] . . . must be able to articulate something more than an inchoate and unparticularized suspicion or 'hunch.' "[64] When this statement from *White* is placed in juxtaposition with the reasoning in *Terry*, it becomes clear that the standard for "reasonableness" is different in the two cases. Merely requiring an officer "to articulate something more" than a hunch is a considerably lower standard than requiring the officer to point to "specific articulable facts" which justify an inference of criminal activity.

This manipulation of the language from *Terry*[65] completely alters what is required of an officer and lowers the requirement for "reasonableness" to a level where almost any anonymous tip could be considered sufficient to justify a stop if any details at all, including non-criminal details, are verified.[66] Thus, although purporting

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62. *Terry*, 392 U.S. at 21. The requirement of specificity of the information on which a police search is predicated is the central teaching of the Supreme Court's fourth amendment decisions. *Id.*

In assessing the reasonableness of a particular search or seizure, the Court must judge the facts against an objective standard. The Court must inquire whether the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate. *Id.* at 21-22.

63. *Id.* at 22. In *Terry*, a 39-year veteran of the police force on patrol noticed three men walk back and forth in front of a store window roughly 24 times. *Id.* at 23. On the basis of his experience, the *Terry* Court held that he had "reasonable cause to believe" that the men were planning a hold-up of the store, thereby warranting further investigation. *Id.*

64. *Alabama v. White*, 110 S. Ct. at 2416 (citing United States v. Sokolow, 490 U.S. 1 (1989)). The full paragraph in *Terry* reads:

> *The officer* need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. [citations omitted] And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his *inchoate and unparticularized suspicion or "hunch,"* but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

Terry, 392 U.S. at 27 (citing Brinegar v. United States, 338 U.S. 160 (1949)) (emphasis added).

65. *Compare supra* note 64, the full unedited paragraph from *Terry*, and the accompanying text to see how the court blatantly reformulated the language in *Terry*.

66. "Corroboration of innocent facts shows that the informer has some familiarity with the suspect's affairs, but it does not suggest that those affairs

to follow the *Terry* standard of "reasonableness," the Court actually lowered the standard through a masterful manipulation of language.[67]

After establishing a dangerously low threshhold for reasonable suspicion, the Court applied the subjective, result-oriented "indicia of reliability" test[68] from *Adams* to meet the "reasonableness" requirement.[69] The *Adams* Court explained that a stop may be justified if the tip is surrounded by enough "indicia of reliability."[70] The *Adams* court, however, neglected to discuss any "clear objective cri-

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include criminal activity; a skillful liar would always allege *some* true innocent facts to make his story appear credible." Comment, *The Informer's Tip as Probable Cause for Search or Arrest*, 54 CORNELL L. REV. 958, 967 (1969) (emphasis in original).

67. Disturbingly, the Court's only mention of the fourth amendment is its statement that merely "some *minimal* level of objective justification for making the stop" is required. *Alabama v. White*, 110 S. Ct. at 2416 (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)) (emphasis added). A review of Supreme Court decisions reveals the misleading nature of this statement. The Court cites *Sokolow*, 490 U.S. at 27, which in turn cites INS v. Delgado, 466 U.S. 210, 217 (1984). Justice Rehnquist's opinion in *Delgado* cites to United States v. Mendenhall, 446 U.S. 544, 554 (1980) and Terry v. Ohio, 392 U.S. 1, 21 (1967). Neither *Mendenhall* nor *Terry* stands for this proposition. For a discussion of *Terry*, see *supra* notes 57-63 and accompanying text. In *Mendenhall*, the Court dealt with a situation which did not reach the level of a fourth amendment seizure. *Mendenhall*, 446 U.S. at 554. The *Mendenhall* Court stated, in dicta, that if the situation had reached a fourth amendment level, the tip would have required "some *particularized and objective* justification." *Id.*

The *Alabama v. White* Court's "minimal level of objective justification" language may have evolved from the Court's reasoning in United States v. Martinez-Fuerte, 428 U.S. 543 (1976). *Martinez-Fuerte* dealt with routine stops at border checkpoints. *Id.* The Court reasoned that the routine and public nature of border stops makes them inoffensive. *Id.* at 560. The Court stated that "[t]he objective intrusion of the stop and inquiry thus remains minimal." *Id.* It is apparent, therefore, that the *intrusion* must be minimal, not the *justification* for the stop. *See also* United States v. Cortez, 449 U.S. 411, 417 (1981) ("officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity"); Delaware v. Prouse, 440 U.S. 648, 661 (1979) ("to insist neither upon an appropriate factual basis for suspicion nor upon some other *substantial and objective standard* 'would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches. '") (emphasis added); (*quoting Terry*, 392 U.S. at 22); Brown v. Texas, 443 U.S. 47, 51 (1978) ("the fourth amendment requires that a seizure be based on *specific, objective facts.* ") (emphasis added); United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975) ("specific articulable facts, together with rational inferences from those facts" are required). The *Alabama v. White* Court's unstudied word choice, cited as though it were a rule, is much more generalized and permissive than the well-deliberated requirement established in *Terry*.

68. *See* Note, *supra* note 6, at 178-79 (the "indicia of reliability" test invites courts to find any attribute of a tip reliable). *See infra* notes 68-91 for a discussion of why the *Alabama v. White* Court's approach is a subjective, result-oriented test.

69. *Alabama v. White*, 110 S. Ct. at 2416-17.

70. Adams v. Williams, 407 U.S. 143, 147 (1972).

teria" for discovering "enough indicia."[71] The *Adams* Court simply noted three "indicia of reliability" which took the tip over the threshhold.[72] First, the informant had given information before, and the officer knew him.[73] Second, the informant offered the information personally, and the information was immediately verifiable.[74] Third, the informant would have been subject to arrest if his information proved false.[75] All three of these "indicia of reliability" are premised on the fact that the informant is known to the officer.[76] In *White*, however, the tipster was *unknown* to the officers. Therefore, none of these *Adams* "indicia" was present in *White*.

Because the informant in *White* was anonymous, "something more" was needed to give the tip a sufficient indicia of reliability, such as personal corroboration by the police of *significant* aspects of the informant's predictions.[77] The *White* case perfectly illustrates the subjectiveness of what constitutes corroboration for purposes of discovering "enough indicia." The same factors which the Supreme Court reasoned exhibited the needed "indicia of reliability,"[78] the Alabama Court of Criminal Appeals concluded exhibited no "indicia of reliability."[79]

The Alabama Court determined it was significant that the officers did not verify that White left the 235-C apartment and that the officers did not know whether the woman they observed get into the described vehicle was White.[80] The Supreme Court, however, concluded it was sufficient that the officers verified that *a woman* left the 235 *building* and got into the described vehicle.[81] The

71. *See generally* Adams v. Williams, 407 U.S. 143 (1972) (the Court merely lists the indicia of reliability relevant to *Adams*); Note, *supra* note 6, at 178-79 (the court has never given a clear indication of exactly what qualifies as "indicia of reliability").

72. *Adams*, 407 U.S. at 146-47.

73. *Id.* at 146.

74. *Id.*

75. *Id.* at 147.

76. In Jernigan v. Louisiana, 446 U.S. 958 (1980) (White, J. dissenting from denial of certiorari), Justice White stated:

> We have not directly decided whether an anonymous tip may furnish reasonable suspicion for a stop and frisk. We have emphasized the specificity of the information provided, the independent corroboration by the police officer, and the danger to the public. [citation omitted] But in the decided cases, these factors were not the only indicia of reliability. The informers in *Adams* and *Draper* [v. United States, 358 U.S. 307 (1959)] were known to the officer and were known to have provided reliable information in the past. The same cannot be said of an anonymous tipster.

Id.

77. *Alabama v. White*, 110 S. Ct. at 2416 (emphasis added); Illinois v. Gates, 462 U.S. 213, 237-38 (1983).

78. *Alabama v. White*, 110 S. Ct. at 2416.

79. *White v. State*, 550 So. 2d at 1078-79.

80. *Id.* at 1079.

81. *Alabama v. White*, 110 S. Ct. at 2417.

Alabama Court explained that it could not hold that the officers corroborated the particular time the informant stated White would leave,[82] because no specific time was revealed in the record.[83] The Supreme Court, however, inferred that because the officers proceeded directly to the Lynwood Terrace Apartments to set up surveillance, White must have left within the time frame predicted.[84] The Alabama Court reasoned that White's destination was insufficiently corroborated because the police stopped her before the Motel.[85] The Supreme Court conceded that the police could not have known whether White would have "pulled in or continued on past" the Dobey's Motel.[86] The Court rationalized, however, that her destination was sufficiently corroborated because she was driving the most direct route possible[87] to Dobey's Motel.[88] Finally, the Alabama Court noted that because White left the apartment complex with nothing in her hands, the police completely failed to corroborate that she was in possession of the brown attache case within which the drugs supposedly were located.[89] The Supreme Court made no mention of this "indicia of *unreliability*" anywhere in its reasoning.[90]

This contrast in the reasoning between the two courts demonstrates the result-oriented subjectivity of the "indicia of reliability" test. The test allows courts to find or not to find reliability in almost any attribute of a tip.[91] The Supreme Court's reasoning also demonstrates that members of the judiciary can selectively choose to disregard certain "indicia of *unreliability*" in order to reach the conclusion they desire.

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82. For a discussion of the Alabama Appellate Court's position on the significance of the state's failure to particularize as to White's "time of departure," see *supra* note 11.

83. *White v. State*, 550 So. 2d at 1079.

84. *Alabama v. White*, 110 S. Ct. at 2417.

85. *White v. State*, 550 So. 2d at 1079.

86. *Alabama v. White*, 110 S. Ct. at 2417. The Court adroitly ignored the fact that White could have turned *before* the Motel. Air Base Boulevard, which runs right into Maxwell Air Force Base, is located between the point White was stopped and the Dobey's Motel. White may well have intended to turn at Air Base Boulevard since she worked at the Air Force Base. Telephone interview with David Byrne, Jr., Attorney for Respondent (Sept. 19, 1990).

87. Whether White took the most direct route possible toward the Dobey's Motel is also debatable. It may have been more direct for her to make a right on Fairview. Telephone interview with David Byrne, Jr., Attorney for Respondent (Sept. 19, 1990).

88. *Alabama v. White*, 110 S. Ct. at 2417.

89. *White v. State*, 550 So. 2d at 1079.

90. *See generally*, Alabama v. White, 110 S. Ct. 2412 (1990) (the Court ignores the fact that Ms. White left the 235 building *without an attache case*); Note, *supra* note 6, at 179 (the reasoning in *Adams* illustrates that courts may ignore any "indicia of *unreliability*").

91. Note, *supra* note 6, at 178.

Finally, even after utilizing this dangerously subjective test, the Court needed to stretch the indicia of reliability it did identify to fit the totality of the circumstances.[92] First, none of the "indicia of reliability" which the Court identified, viewed individually or together, suggested that White was engaged in trafficking narcotics.[93] Moreover, the Court did not even attempt to assert that her behavior was suspicious.[94] In addition, the "innocent details" which were verified were not impressive as to number or specificity.[95] One must suspend one's disbelief or, as the Court did, adroitly ignore facts,[96] to conclude that the police sufficiently corroborated the tipster's predicton of White's *future behavior*.[97]

If the officers had followed White into Dobey's Motel and were she to exit her car with a brown attache case in hand, her *future behavior* might have been verified. Without this independent police corroboration, however, the tip in *White* was merely an unverified assertion that could have been invented by the informant, manufactured by the officer,[98] or "heard at the neighborhood bar."[99]

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92. Under the totality of the circumstances, a lack of both elements in the "highly relevant" two-pronged *Aguilar/Spinelli* test may be satisfied by a strong showing as to "some other indicia of reliability." Illinois v. Gates, 462 U.S. 213, 233 (1983). For a discussion of the "two-pronged" test of *Aguilar/Spinelli*, see *supra* note 45.

93. Independant police corroboration of significant details of the tip may satisfy the "reliability" or "veracity" prong. *Alabama v. White*, 110 S. Ct. at 2417. In contrast to the situation in *Alabama v. White*, the police in *Gates* verified the extremely unusual travel plans which the anonymous informant predicted. In *Alabama v. White*, the Court does not even argue that the verified aspects of the tip demonstrated suspicious behavior.

94. In *Gates*, the defendants' innocent behavior became suspicious when corroborated in detail and viewed together, rather than as a separate series of acts as in *Alabama v. White*. *See Gates*, 462 U.S. at 243-44.

95. If details are not suspicious, corroboration of even "innocent details" of a tip may establish an informant's reliability, but they must be impressive as to number and specificity. *White v. State*, 550 So. 2d at 1078. "Both factors - quantity and quality - are considered in the 'totality of the circumstances - the whole picture.' " *Alabama v. White*, 110 S. Ct. at 2416 (quoting United States v. Cortez, 449 U.S. 411 (1981)).

96. For a discussion of the facts the Court ignored, see *supra* notes 80-90 and accompanying text.

97. The "basis of knowledge" prong may be satisfied if the police corroborate "a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted." *Gates*, 462 U.S. at 245. In *Gates*, the corroboration of the Gates' "suspicious travel arrangements" and "modus operandi of the criminal activity" demonstrated that the tipster had a "special familiarity with the affairs of the suspect." United States v. Alvarez, 899 F.2d 833, 841 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 671 (1991). In *Alabama v. White*, however, without verification of White's destination or the presence of the brown attache case, there was nothing that could not have been "predicted" by anyone who knew she left her apartment at the same time every day.

98. In Williams v. Adams, 436 F.2d 30, 39 (2d Cir. 1970), *rev'd*, 407 U.S.143 (1972) (Friendly, C.J., dissenting), Justice Friendly feared that an officer could readily manufacture an anonymous informant *after* the event. When a police

"[B]ehavior does not become suspicious simply because the police are told about it,"[100] and tips do not predict future behavior simply because the Supreme Court says they do.[101] Had the Court properly applied this "self-verifying" reasoning, it would have held the anonymous tip insufficiently corroborated to justify the investigatory stop in this case.

In conclusion, while purporting to follow the requirements enunciated in *Terry*, the Supreme Court actually altered the principles through a subtle manipulation of language, subjective reasoning, and strained conclusions.[102] Although the police should not

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officer makes an arrest and search and seizure based on what, on later examination, are determined to be insufficient grounds, it would be far too easy to convert those grounds into sufficient corroboration if the officer were permitted to merely invent an informer. In the *Alabama v. White* dissent, Justice Stevens, joined by Justices Marshall and Brennan, voiced the same concern: "[E]very citizen is subject to being seized and questioned by any officer who is prepared to testify that the warrantless stop was based on an anonymous tip predicting whatever conduct the officer just observed." *Alabama v. White*, 110 S. Ct. at 2418.

Police perjury is a very real concern. *See generally* Comment, *supra* note 45, at 851 (advantages and disadvantages of disclosure as a protective device); Comment, *Police Perjury in Narcotics "Dropsy" Cases: A New Credibility Gap*, 60 GEO. L.J. 507 (1971) (problems of police perjury in cases involving narcotics in order to circumvent the exclusionary rule).

99. Spinelli v. United States, 393 U.S. 411, 417 (1969).

100. *Alvarez*, 899 F.2d at 842 (Reinhardt, C.J., dissenting).

101. Justice Marshall stated in his dissent in *Adams*, that under Terry v. Ohio, 392 U.S. 1 (1967), an officer could make a stop based on reliable information short of probable cause. *Adams*, 407 U.S. at 159. The officer, however, could not use "unreliable, unsubstantiated, conclusory hearsay to justify an invasion of liberty." *Id.*

102. It is patently obvious that the Court's version of the totality of the circumstances contains factors not included in the facts nor stated in the opinion. There are at least two other considerations which may have lead the Court to its decision. First, the conservative majority may believe that investigatory stops are *de minimus* intrusions which may be disregarded. If this is so, the Court has subverted the fourth amendment based on its own subjective beliefs and prejudices and violated its duty to act objectively. Second, the Court may distrust lower courts and fear that judges will unrealistically second guess the police who must often make necessarily swift on-the-spot decisions. *See* United States v. Sokolow, 490 U.S. 1, 11 (1989); Amsterdam, *supra* note 5, at 350-51.

The fourth amendment, however, has no meaning if "the conduct of those charged with enforcing the laws" are not subject to the "more detached *neutral* scrutiny of a judge." *Terry*, 392 U.S. at 21 (emphasis added). Police officers' direct involvement in "the often competitive enterprise of ferreting out crime" necessarily colors their judgment. *Id.* at 12 (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)). In this case, under these circumstances, swift action was definitely not required. If White had driven past Dobey's Motel or turned off before reaching the motel, no action would have been appropriate. If she had driven into the motel parking lot and exited her car with a brown attache case in hand the tip might have been substantially corroborated. The officers here should have called the motel to see if White was a registered guest. In *Gates*, before even attempting to obtain a warrant, the officers verified that Mr. Gates had a reservation on a flight to Florida, that he checked into a hotel registered to his wife, and that the following morning he had begun driving back to Illi-

ignore anonymous tips and courts must examine the totality of the circumstances[103] when objectively reviewing an officer's conduct, the Court's utilization of strained reasoning to stretch the facts *of this case*, has established a standard of reasonableness, *for all cases*, which is so low courts may find an officer's conduct reasonable in almost any situation. As a result of the Court's decision, fourth amendment protection against unreasonable seizures has approached the evaporation point. All Americans are now vulnerable to "practical jokes and dishonest law enforcement officers alike."[104]

Fortunately, the state courts are not obligated to adopt the reasoning of the Supreme Court in *White*.[105] Although the Alabama Court of Criminal Appeals set aside its judgment and reinstated the circuit court's decision,[106] other states may find the conservative majority's reasoning unconvincing.[107] Hopefully, other states will resolve these same fourth amendment issues under their applicable

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nois. Illinois v. Gates, 462 U.S. 213, 226 (1983). The police did not arrest Mr. Gates simply because he embarked on a flight going to Florida.

The Court appears to be adopting the attitude of Attorney General Meese who once stated: "If a person is innocent of a crime, then he is not a suspect." J. INCIARDI, *supra* note 2, at 726 (quoting U.S. NEWS & WORLD REP. 67 (Oct. 14, 1985)). It is hard to imagine how much farther away from the fourth amendment the Court can retreat without making the term "accused's rights" an oxymoron.

103. Anonymous tips almost never survived the rigorous application of the *Aguilar/Spinelli* factors, yet "a standard that leaves virtually no place for anonymous citizen informants is not" required by the fourth amendment. *Gates*, 462 U.S. at 238. A conscientious assessment of the basis of crediting such tips, however, is required. *Id.* at 238.

104. Tuite, *Decision Makes Everyone Vulnerable to Anonymous Tips*, CHICAGO DAILY L. BULL., Aug. 22, 1990, at 3, col. 1.

105. The United States Constitution delineates the minimum level of constitutional protection that must be afforded individuals. Note, *Developments in the Law: The Interpretation of State Constitutional Rights*, 95 HARV. L. REV. 1324, 1359-60 (1982). Therefore, state courts are free to extend their state constitutional protections beyond those which the United States Constitution requires. *Id.* at 1367. In fact, "[t]he duty to protect individual rights requires that state courts not regard their constitutions as mere mirrors of federal protections." *Id.* at 1356; *see generally* Braudes, *When Constitutions Collide: A Study in Federalism in the Criminal Law Context, Critique of the In Pari Materia Approach*, 18 U. BALT. L. REV. 76 (1988) (discussion of the inter-relationship of state and federal constitutions).

106. White v. State, 571 So. 2d 400 (1990).

107. The Supreme Judicial Court of Massachusetts, in Commonwealth v. Lyons, 406 Mass. 16, 564 N.E.2d 390 (1990) also specifically declined to follow the Supreme Court's reasoning in *Alabama v. White*. The Massachusetts court held that police corroboration of an anonymous tipster's prediction that two white males would be driving toward Bridgeton, Maine from Chelsea in a silver Hyundai automobile with a specified Maine registration did not supply "reasonable suspicion" to stop two men suspected of possession of cocaine. *Id.* at 16, 564 N.E.2d at 390. The Massachusetts court reasoned that the details the police corroborated were "easily obtainable by an uninformed bystander," and the defendants did not display any suspicious behavior. *Id.* at 20, 564 N.E.2d at 393.

state constitutions or laws.[108]

Martin K. Berks

108. Especially now, individual liberties can only be guaranteed if state courts enforce the protections which their state constitutions provide. Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977). *See also* Brennan, *Symposium on the Revolution in State Constitutional Law: Forward*, 13 VT. L. REV. 11 (1988).

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