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"Your Papers, Please." Is an Identification Requirement Constitutional?

"YOUR PAPERS, PLEASE."— IS AN IDENTIFICATION REQUIREMENT CONSTITUTIONAL?

Several states and municipalities have statutes or ordinances in their criminal codes requiring a lawfully stopped person to identify himself if a policeman requests him to do so.[1] Failure to comply with the police officer's request is punishable as a misdemeanor.[2] Since the "stop and identify" statute requires both the physical act of stopping and the oral act of identification, constitutional challenge to the stop and identify statute has been based on a variety of constitutional theories.[3] The Supreme Court recently considered two cases involving stop and identify statutes. Although the Court's decisions in *Michigan v. DeFillippo*[4] and *Brown v. Texas*[5] did not resolve whether the stop and identify statutes are constitutional,[6] the arguments presented to the Court indicate that the statutes should survive future constitutional challenge.

The stop and identify statute attempts to preserve the valuable practice of field interrogation.[7] Without a stop and identify statute, a police

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[1] *See, e.g.*, CAL. PENAL CODE § 647(E) (West 1970); TEX. PENAL CODE ANN. tit. 4, § 38.02 (Vernon 1974); VA. CODE § 19.2-83 (1975); DETROIT MICH., CODE § 39-1-53.3 (1976). Each stop and identify statute allows an officer making a lawful stop of a suspect to expressly request identification. The statutes punish the failure to identify oneself as a misdemeanor. The Virginia stop and identify statute does not define what punishment follows a failure to identify. *See* Simmons v. Commonwealth, 217 Va. 552, 556, 231 S.E.2d 218, 220 (1977). The California stop and identify statute was originally a vagrancy law, which the California Court of Appeals redefined as a stop and identify statute. *See* People v. Solomon, 33 Cal. App. 3d 429, 439, 108 Cal. Rptr. 867, 873 (Ct. App. 1973), *cert. denied*, 415 U.S. 951 (1974).

The Uniform Arrest Act, adopted in four states, also has a stop and detain provision. *See* DEL. CODE tit. 11, § 1902 (1979); MO. ANN. STAT. § 84.710 (Supp. 1979); N.H. REV. STAT. ANN. § 594.2 (1974); R.I. GEN. LAWS § 12-7.1 (1969). Under the Uniform Arrest Act, failure to identify is not punishable as a misdemeanor. The Act, however, does allow an officer to detain and question any suspect for up to two hours if unwilling to divulge his identity. *See also* Note, *The Uniform Arrest Act*, 28 U. VA. L. REV. 315, 315 (1942).

[2] *See, e.g.*, TEX. PENAL CODE ANN. tit. 4, § 38.02(b) (Vernon 1974); DETROIT, MICH., CODE § 39-1-53.3 (1976). The Texas statute expressly states that violation of the statute subjects the offender to a fine not to exceed two hundred dollars. TEX. PENAL CODE ANN. tit. 4, § 38.02(b) (Vernon 1974) (defining violation of statute to be Class C misdemeanor). *See also* TEX. PENAL CODE ANN. tit. 1, § 12.23 (Vernon 1974) (defining Class C misdemeanor). The Detroit ordinance does not prescribe a penalty for the violation of the statute. DETROIT, MICH., CODE § 39-1-53.3 (1976). The state appellate court in People v. DeFillippo, 80 Mich. App. 197, 262 N.W.2d 921 (1977), held that the structure of the stop and identify statute implied that invocation of a criminal penalty was proper. *Id.* at 201 n.1, 262 N.W.2d at 923 n.1.

[3] *See* text accompanying notes 58-61 *infra*.

[4] 99 S. Ct. 2627 (1979).

[5] 99 S. Ct. 2637 (1979).

[6] *See* text accompanying notes 53-56 *infra*.

[7] Brief for *Amici Curiae*, Americans for Effective Law Enforcement, Inc., The International Association of Chiefs of Police, Inc., and the Michigan Association of Chiefs of Police at 6-8, Michigan v. DeFillippo, 99 S. Ct. 2627 (1979) [hereinafter cited as Brief for AELE]. The *Amici* stressed to the Supreme Court that the stop and identify statute promotes the efficiency of the policeman on the street. The *Amici* contended that, by forcing suspects to

officer may stop a suspect and frisk him for weapons.[8] The officer has no authority, however, to demand or acquire the suspect's identification. The stop and identify statute allows the police to investigate fully each lawfully stopped suspect. By acquiring a suspect's name, the officer can check for outstanding warrants and report the individual's name and activities to the department. Consequently, the stop and identify statute guarantees a flow of necessary information to the department, while hopefully deterring suspects from future criminal activity.[9]

In *Terry v. Ohio,*[10] the Supreme Court recognized the necessity and reasonableness of graduated levels of response by police officers in situations where crimes might be in progress.[11] The Court previously maintained that police should interfere with an individual's privacy only if probable cause to arrest exists.[12] The *Terry* Court sanctioned the stop and frisk encounter based only on reasonable suspicion, concluding that the strict probable cause standard endangered the police officer's efficiency and safety.[13] The *Terry* decision, therefore, replaced the Court's strict interpretation of the fourth amendment with a more flexible interpretation of search and seizure law.[14]

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divulge their identities, the police are able to detect and prevent crimes more efficiently than if suspicious persons are given the right to ignore completely the questions of a police officer. *Id.* at 7.

[8] *See* Terry v. Ohio, 392 U.S. 1, 30 (1968).

[9] Brief for AELE, *supra* note 7, at 12.

[10] 392 U.S. 1 (1968).

[11] *Id.* at 30-31. The Supreme Court in *Terry* allowed the practice of stopping suspects when an officer had a reasonable suspicion that the suspect was about to commit a crime. The Court recognized that forcing a police officer to wait for the crime to occur endangered the lives of police and citizens, and forced police departments to concentrate on the detection rather than the prevention of crime. *Id.*

[12] *See* Henry v. United States, 361 U.S. 98, 102 (1959) (probable cause exists when circumstances known by officer warrant belief that crime has been committed). The *Henry* Court, prior to *Terry,* held that strict enforcement of the probable cause standard protected both the police officer and the public. *Id.* The probable cause standard shielded the officer from false arrests, while it protected the public from arbitrary intrusions. *Id.* at 102-03. *See generally* Remington, *The Law Relating to "On The Street" Detention, Questioning And Frisking of Suspected Persons And Police Arrest Privileges in General,* 51 J. CRIM. L.C. & P.S. 386 (1960).

[13] 392 U.S. at 23-27. The Court in *Terry* recognized that the police officer was placed in a precarious position due to the probable cause requirement. The officer had a duty to question persons acting suspiciously, but could not check these persons for weapons until probable cause to arrest existed. *Id.* at 27. The Court recognized that by not allowing an officer to frisk a stopped suspect, the officer's questions might be answered with bullets rather than words. *Id.* at 8.

[14] *Id.* at 21. In *Terry,* the Supreme Court held that, rather than examine only whether a particular search or seizure met a probable cause standard, a primary inquiry into the reasonableness of the search or seizure was necessary. *Id.* A reasonable search did not require a preliminary finding of probable cause before the search. *Id.* The *Terry* Court relied upon Camara v. Municipal Court, 387 U.S. 523, 534-35 (1967). In *Camara,* the Court stated that the probable cause standard for warrants could be subordinated where a probable cause standard would be unreasonable and inefficient. *Id.* The *Terry* decision thus affected all

While recognizing the importance of aggressive police work and field interrogation,[15] the Supreme Court has not determined whether a police officer may require identification from a suspect. *Amici curiae* in *DeFillippo* argued that a request for identification was implicitly accepted as constitutional in *Terry v. Ohio*.[16] The *Terry* decision, however, offers no conclusive support for this argument,[17] and subsequent Supreme Court decisions provide equally ambivalent language.[18] The *DeFillippo* and *Brown* cases presented the Court with the first clear opportunity to examine the stop and identify statute and determine whether an identification requirement violates any rights protected under the Constitution.

In *Michigan v. DeFillippo*,[19] two Detroit police officers encountered the respondent and a female companion in an alley.[20] The woman was in the process of disrobing when the officers arrived.[21] The officers thus had a

searches and seizures by requiring a double standard of examination. If the search was reasonable, probable cause was not required. Nevertheless, if the search was intrusive upon an individual's privacy and was not supported by an overriding governmental interest, the probable cause examination was required. 392 U.S. at 27.

[15] *See* Adams v. Williams, 407 U.S. 143, 146 (1972); Terry v. Ohio, 392 U.S. 1, 20 (1968).

[16] Brief of AELE, *supra* note 7, at 5-7. The *Amici Curiae* argued that the request for identification was a concomitant element of field interrogation and the stop and frisk encounter. *Id.* Since *Terry* established the constitutionality of field interrogation and the stop and frisk encounter, the AELE contended that the stop and identify statute was constitutionally permissible. *Id.*

[17] *See* 392 U.S. at 31-34 (Harlan, J., concurring); 392 U.S. at 34 (White, J., concurring). In *Terry*, Justices White and Harlan notably differed in their concurring opinions as to whether an officer might demand a suspect's identification. Justice White stated that whether the stopped suspect answers the policeman's questions should have no effect upon the officer's decision to arrest the suspect. *Id.* at 34 (White, J., concurring). Justice White's opinion did not address the constitutionality of a stop and identify statute. Rather, his brief concurrence solely examined those instances when mere suspicion becomes probable cause to arrest. Although Justice White did not elaborate on the suspect's right to silence, his concurrence has been cited as establishing that a suspect does not have to answer a police officer's questions under any circumstances. *See* People v. DeFillippo, 80 Mich. App. 197, 202, 262 N.W.2d 921, 924 (1977). Justice Harlan suggested that the police officer has rights beyond the mere stop and frisk when placed in a dangerous situation. 392 U.S. at 32-33 (Harlan, J., concurring). Harlan intimated that in exigent circumstances, the officer's authority is unfettered. *Id. See, e.g.*, Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977) (per curiam) (officer has broad discretion in handling automobile stops). *See also* Note, *Terry Revisited: Critical Update on Recent Stop-and-Frisk Developments*, WIS. L. REV. 877, 894 (1977).

[18] *Compare* Delaware v. Prouse, 99 S. Ct. 1391, 1401 (1979) (driver stopped on reasonable suspicion must give driver's license to officer); *and* Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (intrusions beyond lawful stop are *de minimus* when officer's safety is involved); *with* Dunaway v. New York, 99 S. Ct. 2248, 2252 (1979) (interrogations require initial finding of probable cause). The Supreme Court has not decided whether a demand for identification in the course of a street encounter is *de minimus* or interrogation. *See* 99 S. Ct. at 2255 n.12.

[19] 99 S. Ct. 2627 (1979).

[20] *Id.* at 2630. The officers were responding to a citizen's complaint that two heavily intoxicated persons were loitering in an alley. *Id.*

[21] *Id.* The Detroit police officers arrested DeFillippo's female companion on a charge of disorderly conduct. She was not involved as a party in any of DeFillippo's ensuing appeals. *Id.* at 2630 n.2.

reasonable suspicion, as required by the City of Detroit's stop and identify ordinance,[22] that a crime was about to occur. One of the officers asked DeFillippo to identify himself. DeFillippo replied that he was "Sergeant Mash" of the Detroit Police Department or alternatively a friend of "Sergeant Mash."[23] The inquiring officer knew that no sergeant by that name existed in the city's police department. Since DeFillippo refused to identify himself properly, the officer arrested him for violating the stop and identify ordinance.[24]

The arresting officers transported DeFillippo to the nearest police station, where they searched him in accordance with department policy. The officers discovered that DeFillippo possessed quantities of marijuana and a controlled drug.[25] After this discovery, the police dropped the charge for violation of the stop and identify ordinance and charged DeFillippo with possession of a controlled substance.[26] Prior to his trial on the drug charge, DeFillippo moved to suppress all evidence, claiming that his arrest under the stop and identify ordinance was unconstitutional.[27] Specifically, DeFillippo claimed two violations of his constitutional rights. First, he argued that the stop and identify ordinance was so vague as to deny him due process.[28] Secondly, DeFillippo asserted that the police subjected him to an unreasonable search through the use of the stop and identify ordinance.[29]

The trial court denied DeFillippo's motion to suppress the evidence. Accepting both of DeFillippo's arguments, the Michigan Court of Appeals allowed an interlocutory appeal and reversed the trial court's ruling.[30] The Michigan Court of Appeals, in reaching its decision, expressly rejected the prosecution's argument that a police officer's good faith reliance on a standing city ordinance validated any arrest under that ordinance.[31]

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[22] DETROIT, MICH., CODE § 39-1-53.3 (1976). *See* note 1 *supra*.

[23] 99 S. Ct. at 2630.

[24] *Id.*

[25] *Id.* DeFillippo possessed phencyclidine, a highly addictive barbiturate. *Id.*

[26] *Id.* at 2630-31. The officers charged DeFillippo with a state drug charge under the Michigan Controlled Substance Act, MICH. COMP. LAWS ANN. § 335.341(4)(b) (1972). People v. DeFillippo, 80 Mich. App. 197, 199, 262 N.W.2d 921, 922 (1977).

[27] 99 S. Ct. at 2630-31. DeFillippo theorized that if he could prove his arrest unlawful, under the authority of Wong Sun v. United States, 371 U.S. 471 (1963), the trial court would dismiss all evidence as tainted. People v. DeFillippo, 80 Mich. App. 197, 200, 262 N.W.2d 921, 923 (1977).

[28] *See* text accompanying notes 83-100 *infra*.

[29] *See* text accompanying notes 101-111 *infra*.

[30] People v. DeFillippo, 80 Mich. App. 197, 203, 262 N.W.2d 921, 924 (1977).

[31] *See* Ball, *Good Faith and the Fourth Amendment, The "Reasonable" Exception To The Exclusionary Rule*, 69 J. CRIM. L. & CRIMINOLOGY, 635, 635-36 (1978) [hereinafter cited as Ball]. In Hamrick v. Wainwright, 465 F.2d 940, 942-43 (5th Cir. 1972), the appellant was arrested and convicted pursuant to Florida's vagrancy statute. *Fla. Stat. Ann.* § 856.02 (West 1976). Following his arrest, the arresting officers searched, fingerprinted and photographed Hamrick. Later, Hamrick was indicted for several felonies based upon the evidence collected during his vagrancy arrest. In the period of time between the vagrancy conviction and the felony indictments, the Florida vagrancy statute was invalidated. *See* 1972 Fla. Laws, c. 72-

Recognizing that a conflict existed among the circuit courts on the issue,[32] the United States Supreme Court in *DeFillippo* concentrated on the officer's good faith reliance on the stop and identify ordinance.[33] Reversing the Michigan Court of Appeals and remanding the case to the trial court, the *DeFillippo* majority stated that invalidating DeFillippo's arrest would not achieve any worthwhile purpose.[34] The Court further noted that the exclusionary rule[35] was designed to deter unlawful police conduct, rather than conduct by officers in accordance with a standing city ordinance.[36] The Court specifically held that an officer's good faith reliance on a statute or ordinance validates an arrest.[37] The Supreme Court considered any further examination of the constitutionality of the stop and identify ordinance unnecessary.[38]

In *Brown v. Texas*,[39] the Texas stop and identify statute mirrored the Detroit ordinance involved in *DeFillippo*.[40] An El Paso police officer stopped Brown in an alley in a section of the city known for drug traffic.[41] When the officer requested his identification, Brown indignantly refused and angrily asserted that the police had no right to stop him.[42] The officer attempted to justify the stop by claiming Brown was a suspicious

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133, § 3. *See also* Smith v. Florida, 405 U.S. 172, 172 (1972). The Fifth Circuit noted that all evidence discovered during Hamrick's vagrancy arrest was not tainted by the subsequent invalidation of § 856.02. 465 F.2d at 942-43. Hence, although Hamrick could not be arrested again under the Florida vagrancy statute, his first arrest and search remain valid for purposes of pending or future criminal proceedings. *Id.*

[32] *Compare* United States v. Carden, 529 F.2d 443, 445 (5th Cir.), *cert. denied*, 429 U.S. 848 (1976) (officer's good faith reliance validates arrest) *and* Hamrick v. Wainwright, 465 F.2d 940, 942-43 (5th Cir. 1972) (subsequent determination of statute's unconstitutionality does not invalidate arrest) *with* Powell v. Stone, 507 F.2d 93, 98 (9th Cir. 1974), *rev'd on other grounds*, 428 U.S. 465, 596 (1976) (good faith reliance on statute does not overcome statute's infirmities). *See also* Brown v. Illinois, 422 U.S. 590, 611-12 (1975) (Powell, J., concurring) (good faith reliance upon statute validates arrest under unconstitutional statute). *See generally* Ball, *supra* note 31.

[33] 99 S. Ct. at 2631-36. The Michigan Supreme Court in People v. DeFillippo denied leave to appeal. 402 Mich. 921 (1978). Thus, the United States Supreme Court granted *certiorari* to the Michigan Court of Appeals. Michigan v. DeFillippo, 99 S. Ct. 76 (1978).

[34] 99 S. Ct. at 2633. *See* Michigan v. Tucker, 417 U.S. 433, 451-52 (1974) (police conduct penalized only if penalty serves valid and useful purpose).

[35] *See* Mapp v. Ohio, 367 U.S. 643, 660 (1961) (evidence illegally obtained shall be excluded from direct use by prosection at trial). *See also* Geller, *Enforcing the Fourth Amendment: The Exclusionary Rule and Its Alternatives*, 1975 WASH. U.L.Q. 621, 656-84.

[36] 99 S. Ct. at 2633. *But see* Canon, *The Exclusionary Rule: Have Critics Proven That It Doesn't Deter Police?*, 62 JUDICATURE 398, 403 (1979) (statistics fail to demonstrate deterrent/non-deterrent effect).

[37] 99 S. Ct. at 2633-34.

[38] *Id. See* text accompanying notes 53-56 *infra*.

[39] 99 S. Ct. 2637 (1979).

[40] *Compare* TEX. PENAL CODE ANN. tit. 4, § 38.02 (Vernon 1974) *with* DETROIT, MICH., CODE § 39-1-53.3 (1976). *See* note 1 *supra*.

[41] 99 S. Ct. at 2639.

[42] *Id.*

stranger.[43] Unable to obtain the requested information from Brown, the officer arrested him for violating the stop and identify statute. Brown was convicted in municipal court for violating the statute. He requested a trial *de novo* in the El Paso County Court, where he was again found guilty.[44]

On appeal to the Supreme Court,[45] Brown contested the constitutionality of the stop and identify statute on a variety of grounds.[46] Unlike DeFillippo, Brown was arrested and convicted solely for the stop and identify violation.[47] Thus, the good faith reliance issue of *DeFillippo* was not a factor in *Brown*. The issues before the Court were whether the Texas stop and identify statute's two requirements, a lawful stop and a failure to identify, had been met, and whether the statutory scheme was constitutionally permissible.

A lawful stop under *Terry* standards requires a stop to be based upon an officer's perception of a reasonable, articulable suspicion.[48] The suspect's conduct must suggest to the officer that a crime has occurred or is imminent.[49] Analyzing the facts in *Brown,* the Court held that the stop of Brown did not meet the *Terry* standard for a lawful stop.[50] The Court based their conclusion on the arresting officer's admission that he did not suspect Brown of any specific misconduct.[51] The Court's holding that the officer made an illegal stop allowed the Court to reverse Brown's conviction without considering the constitutionality of the stop and identify statute.[52]

Neither *DeFillippo* or *Brown* provided the Court with a proper vehicle

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[43] *Id.*

[44] *Id.* at 2640. Following a decision by a municipal court, a convicted person has an automatic right to a trial *de novo* in the County Court. TEX. CODE CRIM. PRO. ANN. arts. 44.17, 45.10 (Vernon 1977). Nevertheless, before a criminal defendant may seek appellate review in Texas, a minimum fine of one hundred dollars must be imposed. *Tex. Code Crim. Pro. Ann.* art. 4.03 (Vernon 1977). The El Paso County Court had fined Brown 45 dollars plus court costs. 99 S. Ct. at 2640.

[45] 28 U.S.C. § 1257(2) (1976). Section 1257(2) provides that the Supreme Court may take jurisdiction over a case involving the constitutionality of a state statute once the highest state court that could render a decision has reached a verdict. *Id.* In Brown, the appellant was barred from any appellate review in the State of Texas because of the small amount in controversy. 99 S. Ct. at 2640. *See* TEX. CODE CRIM. PRO. ANN. art. 4.03 (Vernon 1977); note 44 *supra.*

[46] Brief of Petitioner at 6, Brown v. Texas, 99 S. Ct. 2637 (1979) [hereinafter cited as Brief for Brown]. Brown contested his conviction under his fifth amendment privilege from self-incrimination, his fourth amendment privilege against unreasonable searches and seizures, his rights under the due process clause of the fourteenth amendment, and his first amendment right to free speech. *Id.*

[47] 99 S. Ct. at 2640.

[48] 392 U.S. 1, 26-27 (1968). The *Terry* standard of a "reasonable, articulable suspicion" was designed to mediate between a strict probable cause standard and a *mere* suspicion standard. *See* Bogomolny, *Street Patrol: The Decision to Stop a Citizen,* 12 CRIM. L. BULL. 544, 544-548 (1976) [hereinafter cited as Bogomolny].

[49] *See* 392 U.S. at 26-27.

[50] *See* 99 S. Ct. at 2641.

[51] *Id.* at 2639.

[52] *Id.* at 2641 n.3.

to decide the constitutionality of the stop and identify statute. Since the constitutionality of the stop and identify ordinance was of secondary importance,[53] the *DeFillippo* Court's decision on the good faith reliance issue eliminated the need to examine the stop and identify ordinance.[54] Similarly, the Court unanimously decided in *Brown* that an examination of the stop and identify statute was unnecessary.[55] The facts in *Brown* did not provide a sufficient basis for a decision of constitutional magnitude. Thus, the Court's decisions in *DeFillippo* and *Brown* do not suggest a reluctance to consider the constitutionality of the stop and identify statute. Rather, in both cases, the Supreme Court was compelled to postpone resolution of the constitutionality question.[56]

Despite newsreporting to the contrary,[57] the constitutionality of the stop and identify statute remains a vital issue. States and muncipalities should question the enforceability of the statute where enacted, while other states and municipalities must ponder whether a stop and identify statute, if enacted, might be invalidated by the Supreme Court. Therefore, the arguments presented in *DeFillippo* and *Brown* are worthy of close consideration, since the defendants outlined the stop and identify statute's possible weaknesses.

Four distinct constitutional challenges are available to any individual convicted of a stop and identify violation. First, the defendant can attack the identification requirement as violative of his first amendment right to free expression.[58] Secondly, the defendant can argue that the identification requirement is violative of the fifth amendment privilege against self-incrimination.[59] The defendant also may contend that the stop and identify statute denies the due process of law through the statute's vague construction.[60] Finally, the defendant may claim that the statute violates the spirit of the fourth amendment prohibition against unreasonable searches.[61]

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[53] If the Supreme Court had accepted implicitly that the stop and identify statute was unconstitutional in *DeFillippo* the Court could have summarily reversed *Brown*. Since *Brown* involved a stop and identify statute, any ruling on the statute in *DeFillippo* would have controlled the *Brown* decision. *See* notes 32-38 *supra*.

[54] *See* 99 S. Ct. at 2634 (Blackmun, J., concurring). In *DeFillippo*, Justice Blackmun acknowledged that the good faith reliance issue obviated any need to examine the constitutionality of the stop and identify statute. Blackmun stressed that if bad faith could be demonstrated, (proof of abusive use of the stop and identify statute), then the constitutionality question would be before the Court. *Id.*

[5] 99 S. Ct. at 2641 n.3.

[56] *See* text accompanying notes 53-55 *supra*.

[57] In reporting the *DeFillippo* decision, the media misinterpreted the actual holding of the case. The good faith reliance issue of *DeFillippo* was interpreted to imply that the stop and identify statute was unconstitutional and saved only by the officer's good faith reliance. *See* Wall Street Journal, June 26, 1979, at 1, col. 3; Washington Post, June 26, 1979, at A-4, col. 1.

[58] *See* Brief for Brown, *supra* note 46, at 15-20; text accompanying notes 64-69 *infra*.

[59] *See* Brief for Respondent at 9, Michigan v. DeFillippo, 99 S. Ct. at 2637 (1979) [hereinafter cited as Brief for DeFillippo]; text accompanying notes 69-82 *infra*.

[60] *See* text accompanying notes 83-100 *infra*.

[61] *See* text accompanying notes 101-12 *infra*.

While DeFillippo only alluded to the first amendment,[62] Brown placed special emphasis on the first amendment argument.[63] Brown argued that under the first amendment, an individual has a complete right to decide whether to speak or not. Thus, the government cannot penalize a person for refraining from speaking.[64] Brown emphasized that the Supreme Court previously had ruled that the right to free expression extends to a right to silence.[65] Specifically, the Court had held that a state cannot require a pledge of allegiance from school children or require a person to accept and display the state's motto.[66]

While the Supreme Court has recognized that the first amendment does protect an individual's silence, protection is limited to situations in which a government attempts to force ideological words onto an individual's lips.[67] Brown's argument ignored the fact that the Supreme Court has protected silence only as a form of free expression when issues of religion, politics or philosophy have been present.[68] The logical leap from ideology to identification is difficult to accomplish. By requiring identification, the police officer is not demanding a statement containing any philosophical overtones. Rather, the officer merely asks for an individual's name and address. The inability to tie ideology to identification weakens the first amendment argument. Due to this flaw, a defendant using the first amendment theory will not challenge successfully the constitutionality of the stop and identify statute.

Both DeFillippo and Brown strenuously argued that an identification is compelled self-incrimination in violation of the fifth amendment.[69] The arguments centered on the Supreme Court's rulings invalidating state and federal statutes which required disclosures of incriminating potential from private citizens.[70] The Court has taken the position that a balance between

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[62] *See* Brief for DeFillippo, *supra* note 59, at 14-16.

[63] *See* Brief for Brown, *supra* note 46, at 15-20.

[64] *Id.*

[65] *See, e.g.*, West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 633 (1943). In *Barnette*, the Supreme Court held that the State of West Virginia could not expel students for refusing to recite the pledge of allegiance. *Id.* at 642.

[66] *Id. See also* Wooley v. Maynard, 430 U.S. 705 (1977). In *Wooley*, the Court held that the State of New Hampshire could not limit the free expression of its citizens by requiring that every car in the state display the State's motto. *Id.* at 709.

[67] *See* United States v. O'Brien, 391 U.S. 367, 373 (1968). In *O'Brien*, the Court held that both state and federal governments could enact statutes infringing on the first amendment so long as the government's purposes were legitimate and the intrusion reasonable. *Id.* The Court, however, added that this balancing test will not be utilized unless a true intrusion onto the first amendment occurs. *Id. See also* Chaplinsky v. New Hampshire, 315 U.S. 568, 573 (1942).

[68] *See* notes 65-67 *supra*.

[69] *See, e.g.*, California v. Byers, 402 U.S. 424, 433 (1971) (requirement that participants in automobile accident give each other identification not compelled self-incrimination); Albertson v. Subversive Activities Control Bd., 382 U.S. 70, 77 (1965) (requirement that members of Communist Party register is compelled self-incrimination).

[70] *See* California v. Byers, 402 U.S. 424, 433 (1971). In *Byers*, the Court considered whether § 21750 of the California Vehicle Code requiring drivers involved in accidents to stop

the government's reasons for disclosure and the individual's privacy is required under the fifth amendment.[71] DeFillippo and Brown contended that the stop and identify statute violated the fifth amendment balancing test, because the governmental interest did not outweigh the excessive intrusion into the individual's privacy.[72]

The fifth amendment argument fails, however, because the stop and identify statute is not an excessive intrusion and does fulfill a significant governmental interest. The Supreme Court's definition of the privilege against self-incrimination extends the fifth amendment right solely to testimonial rather than real evidence.[73] The Court has also held that identification is not inherently incriminating because an identification is not, by definition, of a testimonial nature.[74] Hence, for fifth amendment purposes, an identification is a neutral act and cannot constitute self-incrimination.[75]

Even if the Court should reverse precedent and rule that the stop and identify statute forces self-incrimination, the fifth amendment argument will not succeed in overturning the statute.[76] The objectives of the stop and identify statute to protect the police officer on the street and to make him more efficient in his work first must be balanced against the magnitude of the self-incriminatory intrusion.[77] In both *DeFillippo* and *Brown,* the litigants properly placed primary emphasis on the self-incrimination issue rather than the balancing test.[78] The stop and identify statute, nonetheless, should prevail in any future balancing test.

The Court in recent years has granted the police officer significant

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and identify themselves presented a threat of self-incrimination. *Id.* at 426. The Court concluded that § 21750 was not compelled self-incrimination. *Id.* at 434. *See also* United States v. Sullivan, 274 U.S. 259, 263-64 (1927) (Court will not accept extravagant application of the fifth amendment).

[71] *See* California v. Byers, 402 U.S. at 434.

[72] Brief for DeFillippo, *supra* note 59, at 20-22; Brief for Brown, *supra* note 46, at 30-34.

[73] *See* Schmerber v. California, 384 U.S. 757, 764 (1966). The Supreme Court examined the scope of testimonial evidence in several cases prior to California v. Byers, 402 U.S. 424 (1971). *See, e.g.,* United States v. Dionisio, 410 U.S. 1, 7 (1973) (voice exemplars not testimonial evidence); Gilbert v. California, 388 U.S. 263, 266-67 (1967) (handwriting exemplars not testimonial evidence); United States v. Wade, 388 U.S. 218, 222-23 (1967) (requirement that suspect speak before group of witnesses not testimonial evidence); Schmerber v. California, 384 U.S. 757, 764 (1966) (blood test not testimonial evidence). Thus, the Court in *Byers* examined whether an identification was of a physical or testimonial nature. 402 U.S. at 432. The Court concluded that one's identity is similar to one's fingerprints, a physically defining characteristic. *Id.* at 432-34.

[74] *See* California v. Byers, 402 U.S. at 433-34.

[75] *Id.*

[76] The defendant's ability to demonstrate that the stop and identify statute compels self-incrimination is not enough to invalidate the statute. As the Court noted in California v. Byers, a balancing test is necessary. 402 U.S. 424, 427 (1971). The Court through the balancing test seeks to determine if the state's demand for the disclosure is offset by the individual's right to privacy. *Id.*

[77] *Id.* at 27-28.

[78] Brief for DeFillippo, *supra* note 60, at 20-22, Brief for Brown, *supra* note 40, at 30-34.

discretion in dangerous situations.[79] Street encounters between police officers and suspects result in a significant number of attacks on officers each year.[80] By removing the anonymity from street encounters and giving the police officer a chance to record and investigate each suspect through his dispatcher, the stop and identify statute reflects significant governmental concern for the police officer's safety.[81] Future challenges to the stop and identify statute under a fifth amendment theory are likely to fail, unless the Court becomes willing to value an identification requirement as compelled self-incrimination and significantly intrusive to the private citizen. Thus, the likelihood of success under a fifth amendment argument appears small, since the Court has yet to consider an identification to be testimonial evidence.[82]

The fourteenth amendment due process challenge raised in both *DeFillippo* and *Brown* succeeded before the Michigan Court of Appeals.[83]

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[79] *See* Pennsylvania v. Mimms, 434 U.S. 106, 110-12 (1977). In *Mimms,* the Supreme Court noted that approximately 30% of the police officers wounded on duty were involved with automobile stops at the time of the assault. *Id.* at 110. *See* Bristow, *Police Officer Shootings — A Tactical Evaluation,* 54 J. CRIM. L. C. & P. S. 93, 95 (1963). The Court held that in light of such alarming statistics, police offcers should have the discretion and power to order the driver of an automobile out of a lawfully stopped vehicle. 434 U.S. at 111. The Court reasoned that the safety of the officer on the street is a weighty justification, while the intrusion on to the driver's rights is only slight. *Id. See also* Dow, *Police Behavior and Community Relations — A Critical Analysis of* Pennsylvania v. Mimms, 49 PA. B. A. Q. 261, 263-64 (1978).

[80] *See* CRIME IN THE UNITED STATES: FBI UNIFORM CRIME REPORTS, 284 & 291 (1977) [hereinafter cited as REPORTS]. Current statistics demonstrate that in the 10 year period of 1968-1977, 1,094 officers were killed while on duty. *Id.* at 291. Further, in 1977 alone, 49,156 assaults on police officers occurred. *Id.* at 284. Approximately 8% of killings and assaults, a significant percentage, occurred while an officer was following up on suspicious circumstances. *Id.* at 284, 291. In *Mimms,* the Supreme Court was alarmed by the number of assaults occurring during traffic stops. 434 U.S. at 110. The statistics demonstrate that approximately 10% of officer fatalities occurred during traffic stops. REPORTS at 291. Consequently, the officer involved in legitimate street encounters faces a threat of violence almost as serious as an officer in the *Mimms* automobile stop situation.

[81] A significant amount of scholarly work on police tactics and field interrogation has produced inconclusive results in recent years. Studies demonstrate both police efficiency and inefficiency resulting from field interrogation. *See* J. Boydston, San Diego Field Interrogation. Final Report (August 1975) (internally published by The Police Foundation) (field interrogation proven an efficient practice). *But see* Inn, Report on Two Police Practices: High-Speed Chase and Field Interrogation (1973) (unpublished study, Center for Police Development, Southern Methodist University School of Law) (field interrogation proven an inefficient practice). *Amicus curiae* in *DeFillippo* strenuously contended that field interrogation and the stop and identify statute promoted police efficiency. Brief for AELE, *supra* note 7, *passim.* The strongest argument supporting the stop and identify statute is the officer's safety. Secondarily, while field interrogation as a whole might prove an inefficient exercise, the officer's simple request of identification must promote department efficiency in the process of detecting crime. *See generally* A. REISS, JR., THE PUBLIC AND THE POLICE 63-120 (1971); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 51-60 (1967).

[82] *See* California v. Byers, 402 U.S. 424, 433-34 (1971).

[83] People v. DeFillippo, 80 Mich. App. 197, 202-03, 262 N.W.2d 921, 923-24 (1977).

The major difficulty with the fourteenth amendment vagueness claim is that acceptance of the argument would strain the meaning of several Supreme Court precedents.[84]

The Court has based a procedural doctrine known as "void for vagueness" upon the due process clause of the fourteenth amendment.[85] Through different eras and different Courts, the vagueness doctrine has fluctuated in meaning and force.[86] The Burger Court has restricted the vagueness

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[84] *See* Connally v. General Const. Co., 269 U.S. 385, 391 (1926). The Supreme Court has constructed the void for vagueness doctrine from the due process requirement of the fourteenth amendment because the Court views a vague statute as a direct challenge to the legitimacy of judicial procedure. The void for vagueness doctrine is therefore a procedural due process attack on a statute. *See, e.g.,* Giaccio v. Pennsylvania, 382 U.S. 399, 404 (1966). When a statute lacks clarity, the accused is deprived of a fair procedure because the judge is forced to act as both arbiter of justice and lawmaker. First, the judge is defining the vague crime, and then enforcing it. The Supreme Court has held that this degree of arbitrariness in the criminal process violates due process. *See, e.g.,* Papachristou v. Jacksonville, 405 U.S. 156, 165-66 (1972); United States v. Harriss, 347 U.S. 612, 617 (1954). For the stop and identify statute to be proven void for vagueness, the statute's indefiniteness must be significant. Colten v. Kentucky, 407 U.S. 104, 110 (1972).

The possibility does exist, however, that a majority of the Court could rule the stop and identify statute unconstitutional. The dissenters in *DeFillippo,* Justices Brennan, Marshall and Stevens assuredly will vote against the statute in the future. *See, e.g.,* Michigan v. DeFillippo, 99 S. Ct. at 2636 (Brennan, J., dissenting). Justices Blackmun and White appear somewhat sympathetic to the unconstitutionality arguments. Blackmun clearly supported the majority opinion in *DeFillippo* on the good faith issue. 99 S. Ct. at 2634 (Blackmun, J., concurring). His stance on the constitutionality question, however, presently is unclear since he noted the stop and identify statute's potential for abuse. *Id.* Justice White's concurring opinion in *Terry* over 10 years ago places in question his vote on the constitutionality issue. 392 U.S. at 34 (White, J. concurring). The *Terry* concurrence suggests that the stop and identify statute's identification requirement might violate the fourth amendment. *Id.* Justice White's majority opinion in Delaware v. Prouse, 99 S. Ct. 1391 (1979), and his participation in the *Mimms* majority, however, suggest that he might accept the distinction between a legislatively created identification requirement and the indiscriminately applied identification requirement discussed in *Terry*. White's opinion in *Prouse* strongly suggests that so long as a reasonable suspicion is present, a police officer may require identification. 99 S. Ct. at 1401.

[85] *See* Papachristou v. Jacksonville, 405 U.S. 156, 170 (1972). In *Papachristou,* the Supreme Court considered the convictions of several persons under the City of Jacksonville's vagrancy law. The ordinance, written in nineteenth century terms (i.e. "rogues," "common railers," "common pilferers"), allowed officers to arrest persons for habitual wandering or living off of their wives' income. JACKSONVILLE, FLA. CODE § 26-57 (1965). The Supreme Court held that offenses such as "wandering" are unconstitutionally vague and concluded that no individual could define a crime such as "wandering." 405 U.S. at 170. *See generally* Amsterdam, *Federal Constitutional Restrictions On the Punishment of Status,* 3 CRIM. L. BULL. 205 (1967); Douglas, *Vagrancy and Arrest On Suspicion,* 70 YALE L. REV. 1 (1960); Sherry, *Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision,* 48 CAL. L. REV. 557 (1960); Note, *Recent Supreme Court Developments of the Vagueness Doctrine,* 7 U. CONN. L. REV. 94 (1974).

[86] The Warren Court developed two distinct vagueness analyses, one for statutes involving first amendment rights and another for all other statutes. *See* Giaccio v. Pennsylvania, 382 U.S. 399, 404 (1966); N.A.A.C.P. v. Button, 371 U.S. 415, 420 (1963). The first amendment "facial" or overbreadth test examines statutes for hypothetical infringement of first amendment rights. *See* Brandenburg v. Ohio, 395 U.S. 444, 448-49 (1969). The vagueness test

doctrine to one variety of procedural due process problems.[87] When a statute's meaning is obscure, the Court concludes that the defendant is denied due process of law because of the difficulties in presenting a defense to a vague statute.[88] Vague laws allow judge, jury, presecutor or law enforcement officer to define the crime, while meting out punishment.[89] The defendant, when charged under a vague statute, thus is forced to anticipate the interpretation of the statute upon which the trial court will rely.[90]

In *DeFillippo* and *Brown,* both defendants erroneously argued that the stop and identify statute violated the void for vagueness doctrine because the statute's language was vague to the average citizen.[91] DeFillippo and Brown stressed that statutory language such as "lawfully stopped," "reasonable suspicion" or "identification" enabled a police officer to arrest and punish individuals at his discretion.[92]

The Supreme Court's prior decisions on the vagueness doctrine conclusively establish error in the contentions of DeFillippo and Brown. Rather than vagueness problems, the defendants were concerned about the statute's potential for abuse. Instead of stressing the difficulties to be encountered at trial, DeFillippo and Brown applied the vagueness argument to the problems occurring at the time of the arrest.[93] The Supreme Court has

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used on all other statutes is an "as applied" test. *See* United States v. National Dairy Products Corp., 372 U.S. 29, 32-33 (1963). *See also* note 87 *infra.*

[87] *See* United States v. Powell, 423 U.S. 87, 92 (1975); Ernoznik v. Jacksonville, 422 U.S. 205, 217-18 (1975); United States v. Mazurie, 419 U.S. 544, 553 (1975). While the Burger Court continues to recognize the vagueness and overbreadth doctrines as defined by the Warren Court, erosion of the Warren Court standards has occurred. *See* Parker v. Levy, 417 U.S. 733, 755-61 (1974); Arnett v. Kennedy, 416 U.S. 134, 158 (1974). In *Arnett,* the Court did not reject the first amendment "facial" test but interpreted the facts of the case so as to remove all first amendment issues from consideration. *Id. See* Note, *Recent Supreme Court Developments of the Vagueness Doctrine,* 7 CONN. L. REV. 94, 110-15 (1974).

[88] *See* Papachristou v. Jacksonville, 405 U.S. 156, 170 (1972); W. LAFAVE & A. SCOTT, CRIMINAL LAW 85-88 (1972) [hereinafter cited as LAFAVE.]

[89] *See* Giaccio v. Pennsylvania, 382 U.S. 399, 404 (1966).

[90] *See* note 84 *supra.*

[91] *See* Brief for DeFillippo, *supra* note 59, at 11-16; Brief for Brown, *supra* note 46, at 9-15.

[92] *Id.*

[93] The vagueness argument, when used against the stop and identify statute, suggests that the potential for abuse in the statute necessitates a ruling of unconstitutionality. The statute, as any criminal statute, has a potential for abuse. The Supreme Court, however, has recognized several procedures to handle police abuse of criminal statutes. Notably, the exclusionary rule prevents the courts from convicting individuals on illegally obtained evidence. Mapp v. Ohio, 367 U.S. 643, 660 (1961). The fourth amendment additionally requires that the states provide a probable cause hearing before any pretrial restraint of liberty may occur. Gerstein v. Pugh, 420 U.S. 103, 112-23 (1975). The Supreme Court also has held that due process of law prohibits the abusive use of a criminal statute against a particular minority group. Yick Wo v. Hopkins, 118 U.S. 356, 368-69 (1886). The victim of police abuse has opportunities to recover losses incurred due to police intrusion or false arrest. *See* 42 U.S.C. § 1983 (1976); RESTATEMENT (SECOND) OF TORTS § 125 (1965). Thus, the victim may seek money damages in either state or federal court or injunctive relief where appropriate. *See, e.g.,* Goodman v. Dallas, 73 F.R.D. 642, 646 (N.D. Tex. 1977) (enjoining use of Texas stop and identify statute to discourage frequenters of pornographic theaters).

held that the vagueness doctrine does not concern the individual's knowledge of the statute at the time of arrest.[94] The Court views the vagueness question as whether the judicial system can provide a fair procedure to the accused in light of the statute's inadequate language.[95]

The stop and identify statute is not open to a vagueness challenge because a court can easily define the terms challenged in *DeFillippo* and *Brown*. The Supreme Court has established the meaning of a "lawful stop" and of "reasonable suspicion,"[96] while common sense dictates that the term "identification" means an oral or written rendering of an individual's name. The Court also has held that minor imprecision in a statute is not enough to make a statute unconstitutionally vague.[97]

As *Brown* indicates, the most serious problem with the stop and identify statute is not vagueness, because the judiciary was able to define the statute's meaning.[98] The flaw in the statute is that false arrests will occur, whenever the police err in their judgment of reasonable suspicion.[99] This difficulty exists with all statutes, however, and remedies exist to combat the problem.[100] The vagueness argument, as presently defined by the Supreme Court under the fourteenth amendment, simply does not apply to this situation and should not be used to hold stop and identify statutes unconstitutional.

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[94] *See* Shevlin-Carpenter Co. v. Minnesota, 218 U.S. 57, 68 (1910); LAFAVE, *supra* note 88, at 83.

[95] *See* note 84 *supra*.

[96] *See* Terry v. Ohio, 392 U.S. 1, 22-30 (1968). *See also* Smith v. United States, 431 U.S. 291, 308-09 (1977). In *Smith*, the Court solved a potential vagueness problem by interpreting the statute in light of prior Supreme Court decisions. *Id.* Hence, in interpreting the terms "lawful stop" or "reasonable suspicion" as they appear in a stop and identify statute, the Court can look to case law for assistance.

[97] *See* Colten v. Kentucky, 407 U.S. 104, 110 (1972). The identification requirement in most stop and identify statutes is not defined clearly and should be outlined more thoroughly. *See, e.g.*, TEX. PENAL CODE ANN. tit. 4 § 38.02 (1974). The Texas statute states that refusal to give one's name and address constitutes a failure to identify. *Id.* The better approach to drafting this legislation would outline the definition of identification and the proper actions which a police officer should follow in verifying the identification. This level of clarity is not presently a part of any stop and identify statute. *See* note 1 *supra*.

[98] In arguing vagueness, a defendant claims that a statute is open to several and conflicting interpretations, leaving the defendant without notice of his alleged crime. *See* note 85 *supra*. In *Brown*, the Supreme Court had no difficulties with conflicting interpretations of the stop and identify statute. 99 S. Ct. at 2641. The Court unanimously recognized the Texas legislature's intention for the stop and identify statute and ruled that the Texas court had erred. *Id.* If the stop and identify statute was truly vague, the Court would not rule that error had occurred. Rather, the Court would rule that the Texas court had interpreted the statute from one of several possible perspectives. *See* note 84 *supra*.

[99] *See, e.g.*, Goodman v. Dallas, 73 F.R.D. 642, 646 (N.D. Tex. 1977). In *Goodman*, the Dallas Police Department used the stop and identify statute to discourage patrons from frequenting adult entertainment theaters and massage parlors. The Federal Court for the Northern District of Texas ruled that any arrest under these circumstances was improper. *Id.* The court held that no reasonable suspicion that the stopped pesons intended to commit any crime existed. *Id.*

[100] *See* note 93 *supra*.

The final constitutional challenge available to a future defendant derives from the fourth amendment's prohibition on unreasonable searches and seizures.[101] The Supreme Court has held that a full inventory search of a person may occur only after an arrest based on probable cause.[102] DeFillippo and Brown viewed the stop and identify statute as constitutionally infirm because a police officer could turn a reasonable suspicion stop into a full inventory search.[103] Two assumptions are made in concluding that the stop and identify statutes is an unreasonable intrusion under the fourth amendment. First, the fourth amendment argument assumes that an identification requirement is unconstitutional.[104] Second, the fourth amendment argument assumes that the statute is nothing more than a legal legerdemain designed to obviate the probable cause requirement.[105] The stop and identify statute's potential to produce an arrest and search based only on a reasonable suspicion motivated the dissenters in *DeFillippo* to call for the invalidation of the statute.[106]

As with the void for vagueness challenge, the reliance of DeFillippo and Brown on the fourth amendment breaks new legal ground while ignoring previous standards. The Supreme Court has recognized that a state statute is presumed constitutional until proven otherwise.[107] Hence, the bald assumption of invalidity argued in *DeFillippo* and *Brown* is improper. The defendants questioning the stop and identify statute bear the burden of proving that an identification requirement is unconstitutional and that the statute lacks a legitimate underlying purpose.

As noted in the first and fifth amendment arguments, the Court has

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[101] U.S. CONST. amend. IV.

[102] *See* United States v. Robinson, 414 U.S. 218, 236 (1973); Gustafson v. Florida, 414 U.S. 260, 266 (1973).

[103] Brief for DeFillippo, *supra* note 59, at 16-19; Brief for Brown, *supra* note 46, at 20-30.

[104] *See* Michigan v. DeFillippo, 99 S. Ct. at 2636-37 (Brennan, J., dissenting). Justice Brennan, dissenting in *DeFillippo,* theorized that a failure to identify cannot be a crime, because an individual has a right to ignore a police officer's questions. *Id.* at 2634-36. *See* Terry v. Ohio, 392 U.S. 1, 34 (1968) (White, J., concurring). The supposed right to silence, thereby, caused the stop and identify statute to infringe on a protected area, making any arrest under the statute unreasonable and violative of the fourth amendment. *Id.* at 2636-37.

[105] 99 S. Ct. at 2636-37. Dissenting in *DeFillippo,* Justice Brennan stressed that the concepts of a "right to be let alone" and an "expectation of privacy" found in Olmstead v. United States, 227 U.S. 438, 478 (1927), and Katz v. United States, 389 U.S. 347, 352 (1962), should control any interpretation of the stop and identify statute. Brennan did not attempt to balance the conflicting interests of the state and the individual. Rather, he argued that the individual's right to ignore the officer's questions was immutable. 99 S. Ct. at 2636-37. In this light, the stop and identify statute is an offensive concept. Brennan emphasized that the statute serves only to punish individuals that are uncooperative during *Terry* reasonable suspicion stops. *Id.*

[106] 99 S. Ct. at 2634-37 (Brennan, J., dissenting).

[107] *See* Griswold v. Connecticut, 381 U.S. 479, 482 (1965). In *Griswold,* the Court held that it would not review the constitutionality of a state statute unless the potential constitutional error was a palpable. *Id.* thus, unless the defendant can demonstrate that the stop and identify statute violates the Constitution in a direct manner, the stop and identify statute is not bevond a state's legislative authority.

never ruled that an identification requirement is unconstitutional.[108] In addition, states have the authority to punish individuals for impeding a police officer or falsely reporting crimes.[109] The stop and identify statute follows directly from the principle that a state's police power is the least limitable of a local government's powers.[110] An arrest and subsequent search under a stop and identify statute is based upon a finding of probable cause, since a suspect's refusal or his evasive response to an officer's request for identification constitutes a failure to identify. Hence, the assumption under the fourth amendment argument that the stop and identify statute produces a search without probable cause is inaccurate. Therefore, future defendants will not be able to challenge the statute successfully, since the statute is not a ruse and is based upon a legitimate purpose.[111]

The stop and identify statute is a valuable tool for a modern police department. The statute simultaneously assists the police in preventing and detecting crime. Furthermore, the stop and identify statute gives police officers an added measure of authority in dangerous street encounters. The question for the Court in the future will be whether the statute invades the privacy of an individual. Clearly, a strong governmental interest underlies the statute. The Court's present standards under the first, fourth, fifth and fourteenth amendments indicate that the statute is a minor intrusion on the rights of the private citizen. Thus, without a radical change in the Court's present standards, the stop and identify statute's constitutionally appears assured.

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[108] *See* California v. Byers, 402 U.S. 424, 433 (1971); United States v. O'Brien, 391 U.S. 367, 373 (1968). *See also* text accompanying notes 65-78 *supra*.

[109] *See* United States v. Balint, 258 U.S. 250, 252 (1922) (state's police power enables prohibiting conduct beyond *mala in se* crimes).

[110] *See* Lambert v. California, 355 U.S. 225, 228 (1957), *citing* District of Columbia v. Brooke, 214 U.S. 138, 149 (1909).

[111] *See* text accompanying notes 79-81 *supra*. *See also* Note, *Orders to Move On and the Prevention of Crime*, 87 YALE L. J. 603, 620-26 (1978).