arrest have been up to this time, and may remain, of greater practical importance" than searches pursuant to warrants. "[T]he evidence on hand . . . compel[s] the conclusion that searches under warrants have played a comparatively minor part in law enforcement, except in connection with narcotics and gambling laws."[195] Nevertheless, the Court frequently asserts that "the most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specially established and well-delineated exceptions.'"[196] The exceptions are said to be "jealously and carefully drawn,"[197] and there must be "a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative."[198] Although the record indicates an effort to categorize the exceptions, the number and breadth of those exceptions have been growing.

Detention Short of Arrest: Stop and Frisk.—Arrests are subject to the requirements of the Fourth Amendment, but the courts have followed the common law in upholding the right of police officers to take a person into custody without a warrant if they have probable cause to believe that the person to be arrested has committed a felony or a misdemeanor in their presence.[199] Probable cause is, of course, the same standard required to be met in the issuance of an arrest warrant, and must be satisfied by conditions existing prior to the police officer's stop, what is discovered thereafter not sufficing to establish probable cause retroactively.[200] There are, however, instances when a police officer's suspicions will have been aroused by someone's conduct or manner, but probable cause for placing such a person under arrest will be lacking.[201] In *Terry v. Ohio*,[202] the Court, with only Justice Douglas dissenting, approved an on-the-

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[195] American Law Institute, A Model Code of Pre-Arraignment Procedure, Tent. Draft No. 3 (Philadelphia: 1970), xix.

[196] Coolidge v. New Hampshire, 403 U.S. 443, 454–55 (1971) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)); G.M. Leasing Corp. v. United States, 429 U.S. 338, 352–53, 358 (1977).

[197] Jones v. United States, 357 U.S. 493, 499 (1958).

[198] McDonald v. United States, 335 U.S. 451, 456 (1948). In general, with regard to exceptions to the warrant clause, conduct must be tested by the reasonableness standard enunciated by the first clause of the Amendment, Terry v. Ohio, 392 U.S. 1, 20 (1968). The Court's development of its privacy expectation tests, discussed under "The Interest Protected," *supra*, substantially changed the content of that standard.

[199] United States v. Watson, 423 U.S. 411 (1976).

[200] Henry v. United States, 361 U.S. 98 (1959); Johnson v. United States, 333 U.S. 10, 16–17 (1948); Sibron v. New York, 392 U.S. 40, 62–63 (1968).

[201] "The police may not arrest upon mere suspicion but only on 'probable cause.'" Mallory v. United States, 354 U.S. 449, 454 (1957).

[202] 392 U.S. 1 (1968).