In *United States v. Jones*[61] the Court seemed to revitalize the significance of governmental trespass in determining whether a search has occurred, suggesting that an expectation-of-privacy analysis is needed only where no such trespass is at issue. In *Jones*, the Court considered whether the attachment of a Global-Position-System device to a car used by a suspected narcotics dealer, and the monitoring of such device for twenty-eight days, constituted a search for purposes of the Fourth Amendment. Justice Scalia, writing for the Court, found that the attachment of the device to the car represented a physical intrusion on private property, and thus obviated the need for an expectation-of-privacy analysis.[62] While this holding meant that the Court did not rule on the constitutional significance of long-term governmental monitoring of a defendant's movements without trespass (such as might occur by tracking a cell phone), a different majority appears prepared to find a search in those circumstances.[63]

Arrests and Other Detentions.—That the Fourth Amendment was intended to protect against arbitrary arrests as well as against unreasonable searches was early assumed by Chief Justice Marshall[64] and is now established law.[65] At common law, warrantless arrests of persons who had committed a breach of the peace or a felony were permitted,[66] and this history is reflected in the fact that the Fourth Amendment is satisfied if the arrest is made in a public place on probable cause, regardless of whether a warrant has

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800 (1974) (incarcerated suspect; officers need no warrant to take his clothes for test because little additional intrusion). *But see* Ybarra v. Illinois, 444 U.S. 85 (1979) (officers on premises to execute search warrant of premises may not without more search persons found on premises).

[61] 565 U.S. ___, No. 10–1259, slip op. (2012).

[62] 565 U.S. ___, No. 10–1259, slip op. at 3–7. Justice Scalia reprised his physical trespass analysis in Florida v. Jardines, 569 U.S. ___, No. 11–564, slip op. (2013) (police use of drug-sniffing dog on the front porch of a house based on month-old anonymous tip). Emphasizing the primacy of the home among constitutionally protected areas, Justice Scalia reviewed the law of trespass and concluded that there is no implied license, under customary community practice, for police to mount a porch to conduct a drug sniff by a trained canine. Any implied license for the public to approach a house is limited not only to specific areas, but also to specific purposes, according to Justice Scalia. Four dissenting Justices disagreed with this last point, and further concluded that the *Katz* "reasonable expectation of privacy" test was no bar. 569 U.S. ___, No. 11–564, slip op. (2013) (Alito, J., dissenting).

[63] 565 U.S. ___, No. 10–1259, slip op. at 14 (Alito, J, concurring in judgment); Id. at 3 (Sotomayor, J., concurring);

[64] *Ex parte* Burford, 7 U.S. (3 Cr.) 448 (1806).

[65] Giordenello v. United States, 357 U.S. 480, 485–86 (1958); United States v. Watson, 423 U.S. 411, 416–18 (1976); Payton v. New York, 445 U.S. 573, 583–86 (1980); Steagald v. United States, 451 U.S. 204, 211–13 (1981).

[66] 1 J. Stephen, A History of the Criminal Law of England 193 (1883). At common law warrantless arrest was also permissible for some misdemeanors not involving a breach of the peace. See the lengthy historical treatment in Atwater v. City of Lago Vista, 532 U.S. 318, 326–45 (2001).