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CASE COMMENT

CARVING OUT A SPECIAL WARRANT REQUIREMENT: *Arkansas v. Sanders*

INTRODUCTION

There have been many important Supreme Court decisions in the field of warrantless searches. In *Arkansas v. Sanders*,¹ the Supreme Court held that a warrant is required to search personal luggage removed from an automobile.² According to that decision, the automobile exception³ to the Fourth Amendment warrant requirement⁴ does not extend to such luggage. In so holding, the Court completed a process begun in *United States v. Chadwick*⁵ where it invalidated the warrantless search of a footlocker taken from an automobile.⁶ In this respect *Sanders* is certainly an important decision.

This comment discusses the *Sanders* decision in light of its relation to *Chadwick* and the automobile exception. The purpose is twofold. First, it will be shown that *Sanders* is an integral part and an inevitable result of the *Chadwick* holding.⁷ Secondly, it will be demonstrated that in the *Chadwick-Sanders* line, the search of personal luggage has been presented as a separate search and seizure field with its own exceptions and its own problems distinct from the automobile exception.⁸

1. 99 S. Ct. 2586 (1979).

2. *Id.* at 2594.

3. For discussion of the automobile exception see notes 38-46 *infra* and accompanying text.

4. The Fourth Amendment reads:

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.

U.S. CONST. amend. IV.

5. 433 U.S. 1 (1977).

6. See notes 49-59 *infra* and accompanying text.

7. See notes 80-82 *infra* and accompanying text.

8. See notes 85-86 *infra* and accompanying text.

FACTS

On April 23, 1976, Little Rock, Arkansas police set up surveillance at the Municipal Airport, responding to reliable information that Lonnie James Sanders would arrive that afternoon carrying a green suitcase containing marijuana.⁹ Sanders arrived as predicted and after deplaning proceeded through the airport and placed two bags in the trunk of a taxi. He then proceeded to the baggage claim area where an accomplice was waiting. Lifting a green suitcase from the baggage rack, Sanders handed the suitcase to the accomplice and then quickly left the airport and waited in the taxi. Shortly thereafter the accomplice also left the airport. He placed the green suitcase in the trunk of the taxi and joined Sanders inside.¹⁰

The officers who had been observing the two men followed the taxi as it left the airport. After driving a few blocks, the officers radioed to a police patrol car and ordered them to stop the taxi.¹¹ Once the taxi was stopped and the suspects ordered out of the car, the officers requested that the taxi driver open the trunk of the car. Without asking permission of either Sanders or the accomplice, the officers immediately opened the green suitcase and found marijuana hidden inside.¹² Sanders and his accomplice were subsequently indicted for possession of a controlled substance with intent to deliver.¹³

Sanders moved to suppress the evidence found by police in the suitcase as a violation of the Fourth and Fourteenth Amendments.¹⁴ At trial the court denied the motion to suppress the evidence. A jury later found Sanders guilty as charged.¹⁵

Sanders appealed the denial of his motion to suppress to the Arkansas Supreme Court which reversed the trial court decision.¹⁶

9. Sanders v. State, ___ Ark. ___, ___, 559 S.W.2d 704, 705 (1978).

10. *Id.*

11. *Id.*

12. *Id.*

13. The relevant Arkansas statute reads in part: "[I]t is unlawful for any persons to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance." ARK. STAT. ANN. § 82-2617(a) (1976).

14. The Fourth Amendment is set out at note 4 *supra*. The relevant portion of the Fourteenth Amendment states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law" U.S. CONST. amend. XIV.

15. 99 S. Ct. at 2589.

16. ___ Ark. at ___, 559 S.W.2d at 704.

The court noted that probable cause was apparent from the facts of the case,¹⁷ but there was a total absence of exigent circumstances justifying the warrantless search.¹⁸ The court further added that as a container for personal effects,¹⁹ a piece of luggage was not subject to the same factors which diminish expectation of privacy in an automobile.²⁰ Moreover, the suitcase was no longer mobile once it was in police control.²¹ Therefore, the suitcase was not subject to a warrantless search as might be the case with an automobile.²²

In a majority opinion authored by Mr. Justice Powell, the United States Supreme Court affirmed the Arkansas decision.²³ The issue before the Court was whether the Fourth Amendment required police to obtain a warrant to search luggage in a properly stopped automobile where no exigent circumstances exist.²⁴ In answering this question in the affirmative the Court declined the State's invitation to extend the automobile exception to the warrant requirement to the warrantless search of luggage found in an automobile.²⁵ The reasoning behind this decision was that once the suitcase was seized, its mobility was no longer effected by the location from which it was taken.²⁶ Furthermore, luggage found in an automobile is not necessarily accompanied by any lesser expectation of privacy than luggage found in other locations.²⁷

Mr. Chief Justice Burger, joined by Mr. Justice Stewart, concurred, maintaining that the holding in *United States v. Chadwick*²⁸ required police to obtain a warrant to search luggage.²⁹ Chief Justice

17. "The information supplied to the police by the confidential informant is adequate to support the State's claim that the police had probable cause to believe that appellant's green suitcase contained a controlled substance when the police confiscated the suitcase and opened it." *Id.* at ____, 559 S.W.2d at 706.

18. "Indeed, there is nothing in this set of circumstances that would lend credence to an assertion of impracticality in obtaining a search warrant, or support the State's contention that 'mobility of the object to be searched (the green suitcase)' justified the warrantless search." *Id.*

19. See notes 69-71 *infra* and accompanying text.

20. ____ Ark. at ____, 559 S.W.2d at 706.

21. *Id.* at ____, 559 S.W.2d at 707.

22. *Id.*

23. 99 S. Ct. at 2594.

24. *Id.* at 2588.

25. *Id.* at 2593-94.

26. *Id.* at 2593.

27. *Id.*

28. 433 U.S. 1 (1977). For discussion of the *Chadwick* holding see notes 49-59 *infra* and accompanying text.

29. *Chadwick* held that luggage seized in a public place was not entitled to a separate warrantless search exception. 433 U.S. at 12-13. Chief Justice Burger viewed

Burger, however, disagreed that *Sanders* involved the automobile exception. Instead, he argued that police had probable cause to search a specific suitcase and that any connection between the suitcase and the automobile was "merely coincidental."³⁰ Mr. Justice Blackmun and Mr. Justice Rehnquist in their dissent criticized the majority opinion as unclear, and predicted great difficulty for anyone attempting to apply the decision.³¹

BACKGROUND

The foundation for the Fourth Amendment was first proposed by James Madison.³² His proposition stood as a response to the writs of assistance used by the English against the colonists.³³ As a result of this background, the Supreme Court has strictly adhered to the warrant requirement of the Fourth Amendment, holding that searches of private property must be reasonable and conducted pursuant to a proper search warrant.³⁴ As a result it has been well established that where a search is conducted without the prior approval of a judge or magistrate, it is *per se* unreasonable under the Fourth Amendment.³⁵ This rule, however, became subject to a few specifically established and well-delineated exceptions³⁶ in situations where fair application of the Fourth Amendment warrant requirement was not possible.³⁷

One of these situations led to the adoption of an exception for the search of automobiles in *Carroll v. United States*.³⁸ Declaring that there was an historical distinction between the search of a house or structure and the search of an automobile, the Court noted the difficulty of obtaining a warrant for an automobile search where

the *Chadwick* decision as controlling in *Sanders*. See note 30 *infra* and accompanying text.

30. 99 S. Ct. at 2595.

31. *Id.*

32. Knuckles, *Warrantless Automobile Searches: When Are They Constitutionally Permissible?*, 65 ILL. B.J. 532 (1977). The Fourth Amendment is quoted at note 4 *supra*.

33. Writs of assistance were general search warrants which "described no premises and named no persons to be searched," Knuckles, note 32 *supra*.

34. 99 S. Ct. at 2590.

35. *Katz v. United States*, 389 U.S. 347, 357 (1967).

36. *Id.* See, e.g., *Chimel v. California*, 395 U.S. 752 (1969) (search incident to arrest); *Warden v. Hayden*, 387 U.S. 294 (1967) (hot pursuit); *Cooper v. California*, 386 U.S. 58 (1967) (plain view); *Carroll v. United States*, 267 U.S. 132 (1925) (automobile exception).

37. *Johnson v. United States*, 333 U.S. 10, 14-15 (1948).

38. 267 U.S. 132 (1925).

the automobile could be moved from one locality to another.³⁹ In enunciating the *Carroll* rule, the Court stated that where probable cause exists as to the presence of contraband within an automobile, the warrantless search of such an automobile by a law enforcement officer was valid.⁴⁰

The *Carroll* rule was further expanded by the Court in *Chambers v. Maroney*⁴¹ which upheld the search of an automobile after it had been seized and brought to the police station.⁴² The majority argued that warrantless searches were justified only where probable cause and exigent circumstances were both present.⁴³ Thus, where a law officer had probable cause to search an automobile and that auto had already been seized, the exigent circumstance of automobile mobility was not present and a search warrant had to be obtained.⁴⁴ To require a warrant in this situation, however, would have left law officers little choice but to search the automobile immediately on the street under the *Carroll* rule.⁴⁵ The practical solution, then, was to permit warrantless searches of automobiles before and after being seized by police.⁴⁶

Such a practical solution, however, did not settle a further automobile exception issue which was slowly developing in the lower federal courts. This issue centered on the question of whether containers found within an automobile were also subject to warrantless searches under the automobile exception.⁴⁷ The Supreme Court finally dealt with the issue indirectly in *United States v. Chadwick*.⁴⁸

In *Chadwick* a federal district court had granted a motion to suppress marijuana which federal agents had found in a locked

39. *Id.* at 151.

40. *Id.* at 149. See generally Moylan, *The Automobile Exception: What It Is And What It Is Not—A Rationale In Search Of A Clearer Label*, 27 MERCER L. REV. 987 (1976).

41. 399 U.S. 42 (1970).

42. *Id.*

43. *Id.* at 51.

44. *Id.* at 51-52.

45. *Id.* at 52.

46. *Id.* The Court further expanded the auto search exception where the auto was removed to the police station by approving general inventory searches. See *South Dakota v. Opperman*, 428 U.S. 364 (1976).

47. See, e.g., *United States v. Tramunti*, 513 F.2d 1087 (2d Cir. 1975); *United States v. Issod*, 508 F.2d 990 (7th Cir. 1974); *United States v. Soriano*, 497 F.2d 147 (5th Cir. 1974).

48. 433 U.S. 1 (1977).

footlocker.⁴⁹ The agents had taken possession of the footlocker immediately after it had been placed in the trunk of an auto by defendants, removed it to their office and searched it without a warrant approximately one hour later.⁵⁰ The Court of Appeals upheld the District Court decision⁵¹ and the Supreme Court affirmed,⁵² holding that a warrant was required for the search of the footlocker.⁵³

One of the major issues addressed by the Court in *Chadwick* was the State's contention that where probable cause exists, luggage lawfully seized in a public place should be subject to an exception to the warrant requirement.⁵⁴ The State compared this exception to the automobile exception and asserted that luggage was analogous to automobiles for Fourth Amendment purposes.⁵⁵ The majority carefully pointed out that the State was not contending that the luggage should be searched as part of the automobile exception since the relationship between the footlocker and the car in this case was "merely coincidental."⁵⁶

The Court rejected the State's argument for a separate luggage exception.⁵⁷ The search of the footlocker was distinguished from the search of an auto. First, luggage may be mobile in some circumstances but an automobile is inherently mobile. Second, the footlocker was not subject to the diminished expectation of privacy found in an automobile.⁵⁸ Therefore, the justifications for a warrantless search of an automobile did not extend to the search of a footlocker.⁵⁹

The majority in *Chadwick* left unanswered the question of the applicability of this decision to cases where the automobile excep-

49. United States v. Chadwick, 393 F. Supp. 763 (D. Mass. 1975).

50. *Id.* at 767.

51. United States v. Chadwick, 532 F.2d 773 (1st Cir. 1976).

52. 433 U.S. at 16.

53. *Id.* at 15-16.

54. *Id.* at 11-12. The government also argued that the warrantless search was justified based on a search incident to arrest. See *Chimel v. California*, 395 U.S. 752 (1969). Since this contention was not made by the State in *Sanders* it will be excluded from this discussion. 99 S. Ct. at 2593 n.11.

55. Luggage and automobiles are both "effects" under the Fourth Amendment and should therefore be subject to the same warrant requirements. 433 U.S. at 12.

56. *Id.* at 11.

57. *Id.* at 11-13.

58. *Id.* Automobiles are subject to diminished expectation of privacy because they travel public highways and must comply with official registration and inspection requirements. *Id.* at 12-13.

59. *Id.*

tion was at issue.⁶⁰ It was unclear as to whether *Chadwick* was a member of the ever-growing prodigy of the *Carroll-Chambers* line, or precedent for a new series of cases involving luggage searches. When two courts of appeal arrived at completely opposite conclusions while asking this question,⁶¹ the stage was well set for *Sanders*.

THE SANDERS MANDATE

The self-stated purpose of *Sanders* was to clear up the misunderstanding in regard to the application of *Chadwick* to cases of warrantless searches of luggage taken from an automobile.⁶² In doing so the majority stated that *Sanders* would fall on either the *Carroll-Chambers* or the *Chadwick* side of "the Fourth Amendment line."⁶³ Having distinguished *Chadwick* from the automobile search cases, the question in *Sanders* became whether the facts presented an automobile search under the *Carroll-Chambers* line or a luggage search under *Chadwick*.

As it did in *Chadwick*, the Court took great pains to distinguish between these two types of searches.⁶⁴ An automobile is subject to a warrantless search because of its inherent mobility and because "configuration, use, and regulation of automobiles often may dilute the reasonable expectation of privacy."⁶⁵ The Court found these considerations inapplicable to the suitcase in *Sanders* for two reasons.⁶⁶

First, the suitcase in *Sanders* was in police custody when it was searched and therefore was no longer mobile.⁶⁷ The Court admitted that luggage may be as mobile as the auto it rides in, but mobility must be assessed at the point immediately before the search.⁶⁸ Second, since a suitcase is a container for personal effects,

60. See Note, *Criminal Law—Search and Seizure*, 27 DRAKE L. REV. 421, 429 (1978); Note, *Criminal Procedure*, 6 AM. J. CRIM. L. 81 (1978).

61. *Chadwick* does not apply where the automobile exception is relied on to justify the warrantless search of luggage removed from a lawfully stopped automobile. *United States v. Finnegan*, 568 F.2d 637 (9th Cir. 1977). Absent exigent circumstances, *Chadwick* requires that a warrant be obtained to search a suitcase removed from an automobile. *United States v. Stevie*, 582 F.2d 1175 (8th Cir. 1978).

62. 99 S. Ct. at 2588.

63. *Id.* at 2589.

64. *Id.* at 2592-93.

65. *Id.* at 2591.

66. *Id.* at 2592.

67. *Id.* at 2593.

68. *Id.*

one has a greater expectation of privacy in the contents of that suitcase than in an automobile which is primarily used for transportation.⁶⁹ Moreover, personal effects are not less likely to be placed in a suitcase carried in an automobile than in a suitcase generally.⁷⁰ Consequently, luggage searches and auto searches must be distinguished.⁷¹

This distinction does not answer the question presented in *Sanders*, however. That question, more specifically, is whether the search of luggage removed from an automobile should also be distinguished from an auto search. If the exigency of mobility must be judged immediately prior to the search, it is unclear why the search of a suitcase in police custody is any less justifiable than the search of an automobile in police custody.⁷² It is equally unclear why one has an apparently greater expectation of privacy in an unlocked suitcase in one's car trunk than one has in the same items contained in a locked glove compartment.⁷³

The Court in *Chadwick* pointed out an inconsistency in the use of an exigency based on mobility.⁷⁴ Several times the Court has sustained warrantless searches of automobiles which have been taken into police custody and removed to the station house.⁷⁵ There was little chance in these cases of the vehicle being removed or evidence contained in it destroyed.⁷⁶ Yet, despite this seeming absence of mobility, the Court allowed the warrantless search.⁷⁷ Thus, any distinction between auto and luggage searches based on relative lack of mobility is only secondary where luggage is concerned.

What remains as the primary distinction, then, is the undiluted expectation of privacy one has in the contents of a suitcase. This argument, however, also leaves several unanswered questions. The

69. *Id.*

70. *Id.*

71. *Id.* at 2594.

72. The Court has validated several warrantless auto searches where the automobile was within police custody. *See, e.g.*, *South Dakota v. Opperman*, 428 U.S. 364 (1976) (general inventory search approved); *Texas v. White*, 423 U.S. 67 (1975) (seizure of checks from automobile while at police station); *Cady v. Dombrowski*, 413 U.S. 433 (1973) (search of car trunk for weapon while at police station); *Chambers v. Maroney*, 399 U.S. 42 (1970) (*see* notes 41-46 *supra* and accompanying text).

73. This question is presented in the dissenting opinion of Mr. Justice Blackmun and joined by Mr. Justice Rehnquist, 99 S. Ct. at 2596.

74. 433 U.S. at 12.

75. *See* note 72 *supra*.

76. 433 U.S. at 12.

77. *See* note 72 *supra*.

most troublesome of these is why one has a greater expectation of privacy for the contents of a suitcase than in the "container" portions of an automobile.⁷⁸ This problem was recognized by the Ninth Circuit. Under *Sanders*-type reasoning, a law enforcement officer may search the trunk of a car for a brick of marijuana but he may not search a suitcase in that trunk without a warrant even though he has probable cause to believe that the suitcase also contains contraband.⁷⁹

Since neither the distinction based on mobility nor that based on expectation of privacy is without criticism, one wonders why the majority in *Sanders* made no effort to rebut these criticisms. Possibly the majority was hinting that *Chadwick* was sufficient to settle the automobile exception issue discussed in *Sanders*. For instance, it was admitted that *Sanders* was similar to *Chadwick* in several "critical respects."⁸⁰ Moreover, in his concurring opinion, Chief Justice Burger further narrowed any distinction between *Chadwick* and *Sanders* by arguing that *Sanders* presented facts constituting only a luggage search as in *Chadwick*, rather than an automobile search.⁸¹ Thus *Sanders* and *Chadwick* seem nearly identical. The facts in both cases present instances of warrantless luggage searches which are not to be related to the auto search exception. Indeed, what the *Sanders* majority discusses and decides, Chief Justice Burger assumes.⁸²

The separation between automobile and luggage searches which was begun in *Chadwick* was therefore completed in *Sanders*. In deciding whether articles of personal luggage may be searched, the conclusion may be in no way influenced by the fact that the luggage is seized from an automobile.⁸³ As a consequence, in justifying a warrantless search of personal luggage, one must depend on an exception to the warrant requirement other than the automobile exception.⁸⁴

78. See note 73 *supra*.

79. *United States v. Finnegan*, 568 F.2d 637, 641 (9th Cir. 1977). See also note 61 *supra*.

80. In both *Sanders* and *Chadwick* containers were removed from the trunk of a car and searched by law enforcement officers who had probable cause to believe that the containers held contraband. 99 S. Ct. at 2592 n.9.

81. *Id.* at 2595.

82. The Chief Justice proposed that a proper auto search case would involve police who have probable cause to believe that contraband is located somewhere in the auto but do not know the specific location. He declined to decide whether that type of fact situation would present a greater case for a warrantless search of the luggage within the vehicle. *Id.*

83. *Id.* at 2593-94 n.13.

84. *Id.* at 2594.

The *Chadwick-Sanders* line thus may be distinguished from previous decisions regarding the automobile exception. Prior to *Chadwick* this exception had been expanded in several cases.⁸⁵ The results of *Chadwick-Sanders*, however, confine the automobile exception to a narrow field which excludes the search of personal containers within an automobile.⁸⁶

Having confined the automobile exception by removing the luggage searches from that exception, the Court has separated the *Chadwick-Sanders* line from its past. The "new" rationale is not meant to curb auto searches *per se*. Instead, this luggage search rationale represents a limit to which the Court is apparently not willing to extend its exceptions. In this light it is easier to understand Chief Justice Burger's assumption in *Sanders* and the majority decision that *Chadwick* was not an auto search case and neither is *Sanders*.

What remains to be seen, then, is what effect the *Chadwick-Sanders* rationale will have on luggage searches of the future. Following *Sanders*, the fact that a piece of luggage is taken from an auto is not a sufficient exigency to justify a warrantless search of that luggage. The majority in *Sanders* stated, however, that other "special exigencies of the situation"⁸⁷ may suffice. Although it is not clear specifically which "special exigencies" will be sufficient, it is clear that generally they will depend on the probable contents of the luggage and the availability of those contents to the suspect.⁸⁸

Guidelines are more difficult to ascertain since the *Sanders* majority described its holding as applying to "personal luggage."⁸⁹ While the suitcase and footlocker may now be considered personal luggage, it is unclear what other types of containers may fall into

85. See notes 41-46 and 72 *supra* and accompanying text.

86. A comparison of the *Chadwick-Sanders* decisions with decisions concerning searches of persons incident to arrest is also particularly interesting. In *United States v. Robinson*, 414 U.S. 218 (1973), for example, the Court upheld the search of a cigarette package removed from the suspect's pocket during a search incident to his arrest. The dissent objected to the search of the package stating that, "even were we to assume, *arguendo*, that it was reasonable . . . to remove the object . . . in respondent's pocket, clearly there was no justification consistent with the Fourth Amendment which would authorize his opening the package and looking inside." *Id.* at 255-56 (Marshall, J., dissenting). This is the same logic which was adopted by the majority in *Sanders*. The Court sustained the seizure of the suitcase in *Sanders* but overruled the warrantless search.

87. 99 S. Ct. at 2593 n.11.

88. *Id.*

89. *Id.* at 2594.

this category.⁹⁰ As a consequence, the absence of a definition for personal luggage will cause much confusion in the future for courts, suspects, and law enforcement agencies.⁹¹

In expressing its dissatisfaction with the majority's lack of clarity in defining personal luggage, the dissent offered an intriguing hypothetical involving a law enforcement officer who has probable cause to believe that contraband is contained in a portable luggage box attached to the roof of an automobile.⁹² It is probable that a suspect would have as great an expectation of privacy in the luggage box as in a suitcase since both serve to transport personal items. However, the luggage box is more mobile than the suitcase since it is attached to the automobile and is as mobile as the auto itself. Applying the *Sanders* logic that mobility must be determined at the point immediately before the search,⁹³ such mobility would not be diminished until the luggage box is within police control; that is, until it is removed from the auto. If this mobility exigency is sufficient to justify a warrantless search, as it has been in the case of automobiles, the law officer may search the luggage box immediately while it is attached to the auto. As a repository for personal items, however, the luggage box should be entitled to the same Fourth Amendment protection as the suitcase in *Sanders*. Hence, a problem is presented as to whether the portable luggage box is enough "a part" of an automobile to be searched under the automobile exception or whether it is a piece of "personal luggage" under the *Chadwick-Sanders* reasoning.⁹⁴

The luggage box may present an extreme situation and other containers may not be subject to the same problems. Paper bags and knapsacks, for instance, arguably have just as great an expectation for privacy of their contents as does a suitcase and are just as easily taken into police custody. Moreover, other containers such as a gun case may be searched immediately without a warrant "because their contents can be inferred from their outward appearance."⁹⁵ As the dissent pointed out, however, the problems of distinguishing between these containers will be numerous.⁹⁶

90. *Id.* at 2595-96 (Blackmun, J., dissenting).

91. *Id.* at 2595.

92. *Id.* at 2597.

93. See note 68 *supra* and accompanying text.

94. 99 S. Ct. at 2597 (Blackmun, J., dissenting).

95. *Id.* at 2593-94 n.13.

96. *Id.* at 2597 (Blackmun, J., dissenting).

Thus, while the *Sanders* opinion cannot be distinguished from *Chadwick*, it must nevertheless be distinguished from *Carroll-Chambers* and other exceptions to the warrant requirement. At this point luggage searches must be conducted pursuant to a properly issued warrant subject to certain "special exigencies" which may justify a search without that warrant. Although the definitions are still clouded, the future promises more refinement in this new area of searches and seizures.

CONCLUSION

In *Chambers* the Court noted the *Carroll* holding that warrantless searches of an auto stopped on the highway were valid. Therefore, to require a warrant to search an automobile subsequently removed to the station house would present law officers with little choice but to immediately search the auto on the street.⁹⁷ In the same respect, *Sanders* relates to *Chadwick*. *Chadwick* had invalidated the warrantless search of the footlocker after it had been removed from an auto and taken to the station.⁹⁸ The only plausible distinction in this respect between *Chadwick* and *Sanders* is that in *Sanders* the automobile was driven a few blocks before it was stopped and the suitcase seized from its trunk. For the *Sanders* Court, however, to have viewed this distinction as controlling, thereby validating the warrantless search of the suitcase based on the automobile exception, would have left police with the same choice which concerned the Court in *Chambers*. That is, police would be encouraged to allow an automobile to be driven a short distance in order to search all items within that auto without a warrant.

To create such "non-choices" would allow law enforcement personnel to merely dodge Supreme Court decisions. More importantly it would force law officers to search automobiles while on the street or suitcases only after chasing down the automobile they are carried in. The latter might present those officers with situations of unforeseeable danger.

Essentially, then, in light of the *Chadwick* decision the Court could have decided *Sanders* in no other way. This is probably the most practical of all reasons behind the *Sanders* decision. In theory one can separate searches of personal luggage seized from automobiles and the searches of automobiles themselves. In practice, however, one is hard pressed to draw clear distinctions. The

97. 399 U.S. at 52. See notes 44-46 *supra* and accompanying text.

98. 433 U.S. at 15-16.

"Fourth Amendment line" used by the Court⁹⁹ appears at times to be vague and wavering.

In this respect the dissent's criticism that *Chadwick-Sanders* is too unclear to apply in practice is justifiable. The criticism that *Chadwick-Sanders* only supplies "a special warrant requirement"¹⁰⁰ may also not be as questionable as it seems on its face. The warrant requirement is the general rule and the valid warrantless searches are the exceptions, but in these days of new exigencies, the cases upholding the warrant requirement may truly be the exceptions.

99. See note 63 *supra* and accompanying text.

100. 99 S. Ct. at 2596 (Blackmun, J., dissenting).

