CRIMINAL PROCEDURE—SEARCH AND SEIZURE—AUTOMOBILE EXCEPTION TO FOURTH AMENDMENT WARRANT REQUIREMENT DOES NOT ENCOMPASS LUGGAGE FOUND IN VEHICLE—*Arkansas v. Sanders*, 442 U.S. 753 (1979).

On April 23, 1976, Detective David Isom of the Little Rock, Arkansas Police Department, Narcotics Squad, was informed by an anonymous source that Lonnie James Sanders would be arriving on a flight from Dallas, Texas, and would be carrying a green suitcase containing a large quantity of marijuana.[1] In response to this tip, Detective Isom, accompanied by two fellow officers, placed the airport under surveillance.[2] As predicted, Sanders appeared carrying two small pieces of hand luggage which he placed into the trunk of a taxi cab.[3] Returning to the baggage claim area, he approached and spoke briefly with another man who was later identified by police as David Rambo.[4] After retrieving a green suitcase from the baggage area, Sanders handed it to Rambo.[5] Sanders immediately moved outside the airport and entered the cab into which he had previously placed his other belongings.[6] Shortly thereafter, Rambo exited the terminal placing the green suitcase in the trunk of the cab and joining respondent in the back seat.[7]

As the taxi drove away, it was pursued by Detective Isom and a fellow officer in their unmarked police vehicle.[8] Within several blocks of the airport, the cab was overtaken and ordered to pull to the side of the road.[9] The police requested the taxi cab operator to

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[1] Arkansas v. Sanders, 442 U.S. 753, 755 (1979). The reliability of this particular informant had been established by the Little Rock Police Department. Information which he had supplied to them several months prior to this incident had led to the arrest and eventual conviction for possession of marijuana of the respondent involved herein. *Id.*

[2] *Id.*

[3] *Id.* The respondent had had previous contacts with the Little Rock Police Department and was therefore easily identifiable. *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* At the trial, David Rambo claimed that he had never met the respondent prior to the date of the incident. He stated that he had first encountered him that day at the Dallas-Fort Worth Airport, where Sanders allegedly approached him and offered him five dollars to carry his luggage to the car after arriving in Little Rock. Trial Record at 150-51, Sanders v. State, 262 Ark. 595, 559 S.W.2d 704 (1977) [hereinafter cited as Trial record].

Respondent, when called to the stand to testify in his own behalf, rendered a completely contradictory account regarding his prior association with Rambo. He claimed to be Rambo's cousin and to have known him previously. He additionally alleged that the green suitcase belonged to Rambo and denied ever picking it up and handing it to him. *Id.* at 162-66.

[8] Arkansas v. Sanders, 442 U.S. 753, 755 (1979).

[9] *Id.*

open the trunk.[10] In the absence of either a search warrant or the consent of Rambo or respondent, the officers opened the unlocked green suitcase and found 9.3 pounds of marijuana.[11]

Sanders and Rambo were then placed under arrest and transported to the police department in separate patrol units.[12] Both men were charged with possession of marijuana with intent to deliver in violation of state law.[13] In response to Sander's motion to suppress the evidence obtained from the suitcase, the trial court conducted a special hearing and denied this motion without explanation.[14] Sanders was subsequently tried by a jury and found guilty as charged.[15] In accordance with the jury's suggestion, Sanders was sentenced to serve a term of ten years in a state penitentiary and was assessed a fifteen thousand dollar fine.[16]

On appeal, the Supreme Court of Arkansas, in a unanimous decision, found the search conducted by the Little Rock police to be unreasonable under the fourth amendment of the United States Constitution and accordingly, reversed the judgment of the trial court.[17]

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[10] *Id.* One of the officers directed Rambo and the respondent to get out of the cab. Petition for Certiorari at 3, Arkansas v. Sanders, 442 U.S. 753 (1979) [hereinafter cited as Petition for Certiorari]. They were both subjected to a pat-down body search for weapons. Trial Record, *supra* note 7, at 34, 96.

[11] Arkansas v. Sanders, 442 U.S. 753, 755 (1979).

[12] Sanders v. State, 262 Ark. 595, 598, 559 S.W.2d 704, 705 (1977), *aff'd*, 442 U.S. 753 (1979). A factual dispute arose as to when the arrest actually occurred. *See* Brief for Respondent at 2, Sanders v. State, 262 Ark. 595, 559 S.W.2d 704 (1977) [hereinafter cited as Brief for Respondent]. Detective Isom, when called as a witness for the State, testified that the defendants had been placed under arrest at the moment the taxi was stopped. *Id.*; Trial Record, *supra* note 7, at 27. The other officer, however, while undergoing direct examination conducted by the State, claimed that the parties were not under arrest at the time the suitcase was searched. Trial Record, *supra* note 7, at 49. For a further discussion of the significance of the timing of the arrest, see notes 30-33 & 54 *infra*.

[13] Arkansas v. Sanders, 442 U.S. 753, 755 (1979).

[14] *Id.* at 756.

[15] Petition for Certiorari, *supra* note 10, at 4; Arkansas v. Sanders, 442 U.S. 753, 756 (1979).

[16] Arkansas v. Sanders, 442 U.S. 753, 756 (1979). The same jury found Sanders' codefendant, David Rambo, guilty as charged. A lesser penalty, however, was imposed. Trial Record, *supra* note 7, at 188-89. No express reason for the disparity in treatment was mentioned. *Id.*

[17] Sanders v. State, 262 Ark. 595, 599-601, 559 S.W.2d 704, 706-07 (1977), *aff'd*, 442 U.S. 753 (1979). The court recognized as a general rule that searches which are conducted without a warrant are per se unreasonable under the fourth amendment unless they fall within one of the well recognized and carefully delineated exceptions to the warrant requirement. *Id.* at 599, 559 S.W.2d at 706. Relying upon the earlier United States Supreme Court cases of United States v. Chadwick, 433 U.S. 1 (1977), and Coolidge v. New Hampshire, 403 U.S. 433 (1971), the court found that in order to be constitutionally permissible, a warrantless search of an automobile must be based upon the combined existence of probable cause and exigent circumstances. 262 Ark. at 599, 559 S.W.2d at 706. The probable cause requirement was held to have been satisfied on the basis of the detailed information supplied by the anonymous informant. The search

The government's petition for a rehearing was denied by the state supreme court which entered its judgment on January 23, 1978.[18]

The Supreme Court of the United States granted certiorari, and in *Arkansas v. Sanders*,[19] the Court, in a seven to two decision, affirmed the judgment of the Arkansas supreme court. The Court limited its analysis to the issue of whether the automobile exception to the fourth amendment warrant requirement could be extended to encompass the warrantless search of closed personal luggage found within the car.[20]

The fourth amendment requires that all searches and seizures conducted by government agents be reasonable.[21] The general rule appeared to be that searches conducted without a warrant were *per se* unreasonable and, therefore, constitutionally invalid.[22] However, as the law of search and seizure evolved, courts began to recognize that the exigencies of certain situations made it impracticable for law

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was ultimately found to be fatally defective, however, because of the total lack of exigent circumstances which would normally justify the failure to secure a warrant for the search of the luggage. *Id.* at 601-02, 559 S.W.2d at 706-07. Because the car, its occupants, and the luggage itself were within the control of the police, there was no danger that the suitcase or its contents could have been removed before a valid search warrant could issue. *Id.*

> 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 a warrantless search.

Id. at 600, 559 S.W.2d at 706.

[18] Petition for Certiorari, *supra* note 10, at 1-2.

[19] 442 U.S. 753 (1979).

[20] *Id.* at 766. The Court explained that certiorari was granted to resolve "some apparent misunderstanding as to the application of . . . [its] decision in United States v. Chadwick . . . to warrantless searches of luggage seized from automobiles." *Id.* at 754 (citation omitted).

[21] The amendment provides in part, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. CONST. amend. IV. The Supreme Court, in Mapp v. Ohio, 367 U.S. 643, 655 (1961), held that the exclusionary rule of the fourth amendment was applicable to the states through the fourteenth amendment due process clause.

In order to preserve and protect the individual's right to be free from unreasonable searches and seizures, the second branch of the fourth amendment requires that all searches carried out under color of governmental power be authorized by a warrant supported by probable cause. U.S. CONST. amend. IV. Case law has required that such warrants be issued by a neutral and detached magistrate. *E.g.*, Chambers v. Maroney, 399 U.S. 42, 51 (1970).

For a thorough review of the background and development of the fourth amendment, see N. LASSON, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION (4th ed. 1970). *See also* Stengle, *The Background of the Fourth Amendment to the Constitution of the United States, Part One*, III U. RICH. L. REV. 278 (1968); Stengle, *The Background of the Fourth Amendment to the Constitution of the United States, Part Two*, IV U. RICH. L. REV. 60 (1969).

[22] Katz v. United States, 389 U.S. 347, 357 (1967). *See, e.g.*, Stoner v. California, 376 U.S. 483, 486-87 (1964); Chapman v. United States, 365 U.S. 610, 613-15 (1961); Rios v. United States, 364 U.S. 253, 261 (1960); Jones v. United States, 357 U.S. 493, 497-99 (1958).

enforcement officials to secure warrants prior to carrying out an intended search.[23] In response to this realization, several "jealously and carefully drawn" exceptions to the warrant requirement became ingrained in fourth amendment jurisprudence.[24]

None of these departures from the protections of the fourth amendment has had a more pervasive effect upon the law of criminal procedure than the automobile exception which was first recognized in 1925. In *Carroll v. United States*,[25] the Supreme Court of the United States held that so long as law enforcement officers had probable cause to believe that contraband or evidence of crime was contained therein, the warrantless search of an entire automobile was permissible.[26] The basis of the Court's decision was the apparent distinction between stationary structures and movable vehicles.[27] The impracticality of requiring the procurement of a warrant prior to the search of a fleeting object justified the warrantless search of those instrumentalities.[28]

While *Carroll* was frequently relied upon in the enforcement of prohibition laws,[29] it did not have a great impact on other areas of the law since warrantless searches of automobiles were more often

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[23] *See* E. GRISWOLD, SEARCH AND SEIZURE, A DILEMMA OF THE SUPREME COURT 9 (1975). It was eventually recognized that warrantless searches and reasonable searches were not necessarily mutually exclusive. The reasonableness of a search was dependent upon the particular facts of each case. *E.g.*, Cady v. Dombrowski, 413 U.S. 433, 440 (1973); Lewis v. United States, 385 U.S. 206, 212 (1966); Harris v. United States, 331 U.S. 145, 156 (1947); Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931).

[24] Jones v. United States, 357 U.S. 493, 499 (1958). Included among these exceptions were: (1) search incident to lawful arrests, *e.g.*, Chimel v. California, 395 U.S. 752, 762-63 (1969), United States v. Rabinowitz, 339 U.S. 56, 60-61 (1950); (2) exigent circumstances, *e.g.*, McDonald v. United States, 335 U.S. 451, 454 (1948), Johnson v. United States, 333 U.S. 10, 14-15 (1948); (3) consent, *e.g.*, Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973); (4) hot pursuit, *e.g.*, Warden v. Hayden, 387 U.S. 294, 298-99 (1967); and (5) automobile search. For a discussion of the fifth exception, see notes 25-39 *infra* and accompanying text. For a thorough survey and analysis of the recognized exceptions to the warrant requirement see 2 W. LAFAVE, SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT (1978).

[25] 267 U.S. 132 (1925).

[26] *Id.* at 149. In *Carroll*, federal prohibition agents searched the automobile of two known "bootleggers" and discovered sixty-eight bottles of alcoholic beverage concealed behind the upholstery of the seats. *Id.* at 135-36. Since the search of the automobile could not be justified as incident to a lawful arrest, the defendants argued that the warrantless search and subsequent seizure were violative of the fourth amendment. *Id.* at 156-58. The Court, however, determined that the validity of the search need not be dependant upon the validity of the arrest. *Id.* at 158.

[27] *Id.* at 153.

[28] *Id.*

[29] *E.g.*, Brinegar v. United States, 338 U.S. 160, 164-65, 171, 178 (1949); Scher v. United States, 305 U.S. 251, 254-55 (1938); Husty v. United States, 282 U.S. 694, 700 (1931).

justified as being incident to the lawful arrest of the drivers and occupants of the vehicles.[30] The Supreme Court, however, in *Chimel v. California*,[31] severely restricted the usefulness of this justification for a warrantless search. The Court limited the scope of the search to that area within the arrestee's immediate control—"the area from within which he might gain possession of a weapon or destructible evidence."[32] Since this limitation was not applicable to the *Carroll*-probable cause search, that exception became the predominant justification for warrantless searches of motor vehicles.[33]

Once the driver of an automobile is arrested and his vehicle safely secured, the attribute of mobility which lies at the very heart of the *Carroll* exception is seemingly no longer present. The issue, therefore, arose as to whether the automobile exception could be used to justify a warrantless search under such circumstances. In *Chambers v. Maroney*,[34] the Supreme Court expanded the parameters of the *Carroll*-probable cause exception to permit such a search.[35] The Court dismissed the argument that the police should

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[30] Utilization of this exception to the warrant requirement was less troublesome than employment of the automobile search authorized by *Carroll*, given the narrow requirements established in that case. Additionally, it was believed that the entire vehicle was subject to a search incident to a valid arrest.

Although police officers were given wide latitude with respect to the area within which they were permitted to search, the place and time of the search could not be too remote from the place and time of the arrest. Such remoteness would preclude the search from being justified as incident to a lawful arrest. *See, e.g.*, Preston v. United States, 376 U.S. 364, 367-68 (1964). *See also* Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 220 (1968).

[31] 395 U.S. 752 (1969).

[32] *Id.* at 763.

For a discussion of the impact that *Chimel* had upon warrantless searches of vehicles incident to the driver's arrest, see 2 LAFAVE, *supra* note 24, at 498-508.

[33] W. RINGEL, SEARCHES & SEIZURES, ARRESTS AND CONFESSIONS § 11.1(a) (2d ed. 1979). Subsequent to *Chimel*, automobile searches have not been justified as being incident to a lawful arrest except in those rare cases where, at the time of a suspect's arrest, probable cause to search his vehicle did not exist. *Id.*

[34] 399 U.S. 42 (1970).

[35] *Id.* at 52. In *Chambers*, the defendants were arrested shortly after being identified as participants in the robbery of a local service station. *Id.* at 44. The car in which they had been driving was removed to the police station where it was subsequently searched without a warrant. *Id.* The search revealed two .38 caliber revolvers along with other incriminating evidence. *Id.* The defendants were indicted and ultimately convicted for the commission of the holdup. *Id.* at 45.

The Court found that the probable cause requirement of the exception had been satisfied. *Id.* at 47-48. The police, having received a detailed description of the suspects and their vehicle, had reasonable cause to believe that the car might contain the weapons used to perpetrate the crime or the fruits thereof. *Id.* The existence of this probable cause would have justified an immediate search of the vehicle. *Id.* at 52. However, the officers chose to remove the car to the police station and search it there. *Id.* at 44. The Court found that both the probable cause factor and the mobility of the vehicle, although in police custody, still existed at the station. *Id.* at 52. The presence of these factors excused the absence of a warrant and validated the search. *Id.*

search a vehicle immediately after stopping it, or alternatively, seize and detain the car until a warrant is procured.[36] It was held that neither of these methods could be characterized as a "greater or lesser intrusion" upon fourth amendment rights.[37]

Two years following the *Chambers* decision, the expansion of the automobile exception was somewhat curtailed in *Coolidge v. New Hampshire*.[38] There, the Court recognized that "[t]he word 'au-

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[36] *Id.* at 51-52. The Court stated that "[g]iven probable cause to search, either course is reasonable under the Fourth Amendment." *Id.* at 52.

[37] *Id.* at 51-52.

The fourth amendment rights that are threatened in this type of situation are (1) an interest in the secrecy of the car's contents and (2) an interest in maintaining control over one's property. Note, *Warrantless Searches and Seizures of Automobiles*, 87 HARV. L. REV. 835, 840-41 (1974). It is the seizure of the vehicle which impinges upon the possessory interest in the property, and it is the search which violates the interest in maintaining the secrecy of the car's contents. *Id.* The Court in *Chambers* refused to hold that one of these interests was more deserving of fourth amendment protection than the other. As between the immediate search and the indefinite immobilization of the car, it was argued that the latter was the less offensive intrusion on constitutional rights due to the preference for having a neutral and detached magistrate determine whether probable cause existed. 399 U.S. at 51. It was ultimately held, however, that the question of "which is the 'greater' and which the 'lesser' intrusion is itself a debatable question and the answer may depend on a variety of circumstances." *Id.* at 51-52.

In dissent, Justice Harlan made clear his belief that an immediate warrantless search "involve[d] the greater sacrifice of Fourth Amendment values." *Id.* at 63 (Harlan, J., concurring in part and dissenting in part). For those persons who are more greatly inconvenienced and offended by the delay involved in waiting until a warrant can be obtained, consent always remains a viable alternative. *Id.* at 64 (Harlan, J., concurring in part and dissenting in part). The privacy interest in the contents of one's automobile was therefore viewed as a more significant fourth amendment right than the interest in maintaining control over one's own property.

Justice Harlan's view that the right to maintain the secrecy of the contents of one's automobile was deserving of the same fourth amendment protections as any other privacy interest was never accepted by the Court. In fact, this notion was later expressly rejected in an opinion which found that the automobile was a form of property in which individuals enjoyed a reduced expectation of privacy. Cardwell v. Lewis, 417 U.S. 583, 590 (1974). Motor vehicles were instrumentalities that had been designed solely for transportation; they were never intended to serve as "one's residence or as the repository of personal effects." *Id.* Along with the inherent mobility of the vehicle, the diminished expectation of privacy which surrounds it became the second half of the rationale justifying the "automobile exception." Arkansas v. Sanders, 442 U.S. at 761. *See* United States v. Chadwick, 433 U.S. 1, 12-13 (1977).

[38] 403 U.S. 443 (1971). After several weeks during which the defendant had been under investigation for possible involvement in a recent murder, he was arrested at his home. The police towed his car, which had been sitting in his driveway, to the station. *Id.* at 445-47. The vehicle was searched three times: the first instance was two days after its seizure; second, one year after its seizure; and again fourteen months thereafter. *Id.* at 448. The Court refused to find that the search was permissible under the "*Carroll-Chambers*" theory, noting that the rationale behind the *Carroll* exception was the inherent mobility of the vehicle. *Id.* at 459-62. The exigent circumstances justified the warrantless search of a motor vehicle that had been stopped on the highway. In that situation, " 'the car is moveable, the occupants are alerted, and . . . the opportunity to search is fleeting.' " *Id.* at 460 (quoting Chambers v. Maroney, 399 U.S. at 51). The Court stated that the facts in *Coolidge* did not resemble these circumstances. *Coolidge* was distinguishable in that, during their investigation, the police were aware of the

tomobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."[39]

Parallel to the development and application of the automobile exception, a collateral issue involving its scope often arose: assuming a warrantless search of an automobile was justifiable pursuant to the *Carroll-Chambers* exception, did this authorization necessarily encompass the search of closed containers found within the vehicle?[40] *United States v. Chadwick*[41] was the first United States Supreme Court case which tangentially addressed this issue. In *Chadwick*, after arresting the defendant and towing his vehicle to the local federal building, narcotics agents conducted a warrantless search of a footlocker that had been found in the trunk of the car.[42] The gov-

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car's probable connection with the crime, and there was no indication that the defendant intended to flee. Moreover, the defendant had been consistently cooperative with the police and had not taken advantage of the ample opportunity to destroy any incriminating evidence. 403 U.S. at 460. "The opportunity for search was thus hardly 'fleeting.' " *Id.* Since *Carroll* would have failed to justify a warrantless search of the defendant's automobile carried out immediately upon his arrest, *Chambers* could not be used to validate the later searches conducted by police at the station. *Id.* at 463. Thus, the Court read *Chambers* as justifying searches which occur at some place other than the location where the vehicle is first seized only when an immediate search pursuant to *Carroll* would have been proper in the first instance. *Id.*

[39] 403 U.S. at 461-62.

[40] *See* Note, United States v. Chadwick *and the Lesser Intrusion Concept: The Unreasonableness of Being Reasonable*, 58 B.U. L. Rev. 436, 456 (1978); 2 LAFAVE, *supra* note 24, at 535. Prior to the 1977 case of United States v. Chadwick, 433 U.S. 1 (1977), it seemed that a majority of the circuit courts of appeals were answering the question in the affirmative. *E.g.*, United States v. Vento, 533 F.2d 838, 867 n.101 (3rd Cir. 1976) (warrantless search of paper bag found in the defendant's vehicle); United States v. Tramunti, 513 F.2d 1087, 1104-05 (2d Cir.), *cert. denied*, 423 U.S. 832 (1975) (warrantless search of suitcase removed from back seat of suspect's automobile); United States v. Anderson, 500 F.2d 1311, 1315 (5th Cir. 1974) (search of containers found in automobile conducted contemporaneously with search of vehicle); United States v. Soriano, 497 F.2d 147 (5th Cir. 1974) (en banc), *reaffirmed without published opinion sub nom.* United States v. Aviles, 535 F.2d 658 (5th Cir. 1976). *But see* United States v. Garay, 477 F.2d 1306, 1308 (5th Cir. 1973) (exigencies of situation cannot validate warrantless search of suitcases made when appellants were under restraint and therefore incapable of concealing or destroying the suitcases or their contents).

[41] 433 U.S. 1 (1977).

[42] *Id.* at 4-5. Federal narcotics agents in Boston had received information from Amtrak Railroad officials concerning a footlocker arriving on a train from San Diego. *Id.* at 3. The agents observed three suspects and a train station attendant lifting the footlocker into the trunk of Chadwick's waiting car. *Id.* at 4. While the trunk of the car was still open, and before its engine had been started, the agents moved in and arrested all three suspects. *Id.* They were then removed, along with the car and footlocker, to the Boston Federal Building. *Id.* Approximately ninety minutes after the arrest, the agents opened the double locked footlocker without obtaining either the respondent's consent or a search warrant. *Id.* Contained therein was a large amount of marijuana. *Id.* at 5.

In the district court, the government attempted to justify the agents' actions under the automobile exception. United States v. Chadwick, 393 F. Supp. 763, 771 (D. Mass. 1975), *aff'd*, 532 F.2d 773 (1st Cir. 1976), *aff'd*, 433 U.S. 1 (1977). The lower court rejected this

ernment attempted to formulate a "hybrid" exception for luggage by extending the *Carroll* rationale to searches of easily moveable objects.[43] The Court rejected this contention by finding that the traditional justifications for the automobile exception of mobility and diminished expectation of privacy were not applicable to luggage.[44] The proper procedure in this instance would have been to seize the footlocker and secure it until a valid search warrant was acquired.[45] The Court's refusal to so extend the *Carroll* rationale to these objects led many lower courts to conclude that the automobile exception could not justify the warrantless search of closed containers merely because they had been located within a motor vehicle.[46] The resulting split

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contention by determining that the relationship between the footlocker and the automobile was purely coincidental. *Id.* at 773. The court noted that the locker had not been transported in the vehicle, the car trunk was never closed between the time the defendants had first placed the footlocker in the automobile and when they were arrested by federal agents, the car's engine was not engaged and no one was sitting behind the wheel in the driver's seat. "Under these circumstances, the floor of the automobile trunk was nothing more than a platform or resting place for the footlocker." *Id.* at 772.

[43] 433 U.S. at 11-12. In both the court of appeals and the Supreme Court, the government abandoned the argument that the warrantless search was justified under the automobile exception. Instead, it was asserted that the rationale which permitted warrantless searches of automobiles, that is, mobility, demonstrated the reasonableness of the warrantless search of luggage. *Id.*

[44] *Id.* at 13. The Court commented that:

> [l]uggage contents are not open to public view, except as a condition to border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile.

Id. The mobility aspect of the footlocker, once in the Boston Federal Building, was negligible, if not non-existent. *Id.* "With the footlocker safely immobilized, it was unreasonable to undertake the additional and greater intrusion of a search without a warrant." *Id.* Thus, the enigma of whether an immediate search would constitute a "greater or lesser intrusion" on fourth amendment rights than the immobilization of an object until a warrant was obtained, which was left unresolved in *Chambers*, was definitively answered in *Chadwick*. *Id.* at 13-14 n.8. *See* note 37 *supra* and accompanying text.

[45] *See* 433 U.S. at 13-14 n.8.

[46] *See, e.g.*, United States v. Stevie, 582 F.2d 1175 (8th Cir. 1978) (*en banc*). In *Chadwick*, Justice Brennan concurred, noting that the more narrow issue of whether or not the automobile exception could have justified the search of the footlocker remained unresolved. 433 U.S. at 16-17 (Brennan, J., concurring).

> While the contents of the car could have been searched pursuant to the automobile exception, it is by no means clear that the contents of locked containers found inside a car are subject to search under this exception, any more than they would be if the police found them in any other place.

Id. at 17 n.1 (Brennan, J., concurring).

of authority among the courts evidenced the fact that *Chadwick* had by no means resolved the issue.[47]

The Supreme Court ultimately confronted this dilemma in *Arkansas v. Sanders*.[48] The suitcase which was subjected to a warrantless search in this case had experienced substantially more than a "mere coincidental" contact with the vehicle from which it had been previously removed.[49] The Court recognized that the issue now before it required a determination of whether the warrantless search of the suitcase was, according to the *Chadwick* rationale, violative of the fourth amendment, or constitutional pursuant to the *Chambers–Carroll* exception.[50]

The dissenters, however, felt that had the issue been addressed, the answer would have been clear. If the agents had delayed the arrest until the car had begun to drive away, the search and seizure would have been constitutional under the automobile exception. *Id.* at 22-23 (Blackmun, J., dissenting). It was also noted that the exception to the warrant requirement includes searches of locked automobile compartments, e.g., glove compartments and trunks. *Id.* at 23 n.4 (Blackmun, J., dissenting).

[47] Two diametrically opposed positions were adopted by the Eighth and Ninth Circuit Courts. In *United States v. Stevie*, it was found that an individual's expectation of privacy in the contents of his luggage (established in *Chadwick*) is entitled to the protection of the fourth amendment, regardless of whether the luggage was found within an automobile. 582 F.2d 1175, 1178-79 (8th Cir. 1978) (*en banc*).

At the opposite end of the spectrum, the Court of Appeals for the Ninth Circuit upheld the validity of a warrantless search of luggage removed from the appellant's car. United States v. Finnegan, 568 F.2d 637, 641 (9th Cir. 1977).

[48] 442 U.S. 753 (1979).

[49] *See id.* at 755. In *Sanders*, the suitcase was placed in the trunk of the taxi, and the vehicle traveled several blocks before being stopped by the detectives. *See* notes 8-10 *supra* and accompanying text.

The Chief Justice, in his concurring opinion, felt that the nexus between the suitcase and the vehicle was only fortuitous, and that the automobile exception was not really involved in this case. 442 U.S. at 767 (Burger, C.J., concurring). Instead of focusing upon the substantiality of the contact that the suitcase had experienced with the taxi, he viewed as determinative the fact that the police had specific probable cause to suspect that contraband was located in the container itself, and not just somewhere in the vehicle. *Id.* (Burger, C.J., concurring). He therefore concluded that the relationship between the automobile and the suitcase was purely coincidental and, thus, did not justify invoking the automobile exception. *Id.* (Burger, C.J., concurring). For a discussion of the concurring opinion, see note 63 *infra* and accompanying text.

[50] 442 U.S. at 757. Although unconfirmed until the *Sanders* decision, it was arguable that *Chadwick* prohibited any warrantless search of luggage, regardless of its location immediately preceding the search. *See* notes 46 & 47 *supra* and accompanying text. Following the *Chambers* line of reasoning, however, it seemed that the contents of containers found in automobiles should be just as accessible to warrantless searches as the contents of the vehicle itself. Since, as the *Chadwick* dissenters had noted, *Chambers* authorized the search of an automobile's locked compartments, 433 U.S. at 23, n.4 (Blackmun, J., dissenting), there appeared to be no reason for treating containers found within those areas of the car under a different fourth amendment standard. No distinction in terms of mobility or expectation of privacy between the locked

Justice Powell, writing for the majority of the Court, conceded that the first requirement of the *Carroll* formula, that is, probable cause to believe the vehicle contained contraband or evidence of a crime, was fully satisfied in this instance.[51] The Court found that the officers, by seizing the suitcase and bringing it within their exclusive control, had rendered it immobile, thereby dissipating the exigency of the situation.[52] The Court noted that the exigency of mobility associated with a particular object cannot be measured or affected by the place from which it was seized.[53] The fact that a suitcase had been traveling in any type of vehicle immediately preceding its seizure was now reduced to an irrelevancy in the context of fourth amendment analysis.[54]

The Court additionally found that the second prong of the rationale justifying the automobile exception, namely, the reduced expectation of privacy surrounding a vehicle, could not be applied to personal luggage despite the fact that the luggage had been taken from a car stopped on the highway.[55] The very purpose of luggage is to serve as a repository of an individual's personal belongings. Accordingly, a person's expectation in maintaining the privacy of those items will not be dissipated merely because he intends to travel with such luggage in an automobile.[56]

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portions of automobiles and luggage found therein was apparent. 442 U.S. at 769 (Blackmun, J., dissenting). After the police seize an automobile, both its trunk and any suitcases contained therein can be adequately protected until a warrant is obtained. 2 LAFAVE, *supra* note 24, at 540-41. Additionally, any distinction between the trunk of the vehicle and suitcases as repositories for personal effects is difficult to comprehend. Viewed in this respect, the expectation of privacy in the locked compartments of the vehicle should not be diminished as is the case with the other portions of the automobile. *Id.*

[51] 442 U.S. at 761. *See* notes 1-6 *supra* and accompanying text.

[52] 442 U.S. at 761. " '[T]here was not the slightest danger that [the luggage] or its contents could have been removed before a valid search warrant could be obtained.' " *Id.*

[53] *Id.* at 763.

[54] *See id.* at 763-66. The Court was careful to note, however, the possible existence of "special exigencies," other than the location of an object immediately prior to its search, which would independently justify a warrantless search. *Id.* at 763 n.11. *See, e.g.*, United States v. Chadwick, 433 U.S. 1, 15 n.9 (1977) (dicta) (probable cause to believe suitcase contains immediately dangerous instrumentality justifies search without warrant).

Additionally, if a suitcase was in the immediate control of an arrestee, its warrantless search might be justified as incident to a lawful arrest. *See* United States v. Robinson, 414 U.S. 218, 236 (1973). *But see* United States v. Chadwick, 433 U.S. at 15 (warrantless search of luggage seized at time of arrest invalid where no exigency exists).

The State, in the instant case, however, did not argue or attempt to justify the search of respondent's suitcase as incidental to his arrest. 442 U.S. at 764 n.11. The Court, therefore, did not consider the constitutionality of that occurrence. *Id.*

[55] 442 U.S. at 764.

[56] *Id.* It was noted that "one is not less inclined to place private, personal possessions in a suitcase merely because the suitcase is to be carried in an automobile rather than transported

The State, citing *Chambers*, maintained that since the seizure and immobilization of the suitcase was cognizable under the fourth amendment, an immediate search would have been no more constitutionally offensive.[57] By way of a footnote, the Court refused to determine which of these two methods was more intrusive upon an individual's fourth amendment rights.[58] Instead, the Court focused on the disparity between the inconvenience which would be caused to police departments by requiring the seizure and indefinite retention of automobiles until a warrant could be obtained, and requiring the same procedure for luggage.[59] Since the burdens attendant to the seizure and impoundment of luggage were substantially less, it was held that the police could not justify the more intrusive action of conducting a luggage search without a warrant.[60] The Court therefore concluded that the police, in searching Sander's suitcase, had overstepped the bounds of their authority and acted unconstitutionally.[61] *Carroll*, and the litany of cases following it, would not serve to support the warrantless search of a suitcase "merely because it was located in an automobile lawfully stopped by the police."[62]

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by other means or temporarily checked or stored." *Id.* The Court was merely reiterating the *Chadwick* rationale. There, the Court determined that luggage does not possess the qualities which serve to decrease the expectation of privacy surrounding motor vehicles. 433 U.S. at 13. *See* note 44 *supra*.

[57] 442 U.S. at 765 n.14.

[58] *Id.* The Court in *Chadwick* found a search to be a far greater intrusion than a seizure. 433 U.S. at 13-14 n.8.

[59] 442 U.S. at 765-66 n.14. Requiring the seizure and immobilization of vehicles

> would have imposed a constitutional requirement upon police departments of all sizes around the country to have available the people and equipment necessary to transport impounded automobiles to some central location. . . . Moreover, once seized automobiles were taken from the highway the police would be responsible for providing some appropriate location where they could be kept, with due regard to the safety of the vehicles and their contents, until a magistrate ruled on the application for a warrant.

Id.

[60] *Id.* at 766. Impliedly, the seizure and retention of the suitcase was, by fourth amendment standards, a less objectionable invasion into the individual's rights. *Id.* For those persons who would be more greatly offended by the delay and inconvenience of having their personal belongings indefinitely impounded, the Court found that consent to an immediate search was always available. *Id.* at 764 n.12. However, as Chief Justice Burger noted in his concurring opinion, some people, although not involved in any illegal activity, might not desire to have the contents of their luggage exposed publicly. *Id.* at 767. (Burger, C.J., concurring).

[61] *Id.* at 766.

[62] *Id.* at 765-66. The Court was careful to limit its holding to personal luggage. *Id.* at 766. The "full protection of the Fourth Amendment" which had just been accorded to suitcases, might not be equally available to other types of containers, *id.* at 764-65 n.13, especially those which "by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance." *Id.* As examples, the Court proffered "a kit of burglar tools or a gun case." *Id.*

Chief Justice Burger, joined by Justice Stevens in a concurring opinion, agreed with the majority's finding that the location of a piece of luggage immediately prior to its search has absolutely no bearing upon the expectation of privacy which surrounds it.[63] He refused to find, however, that the circumstances of this case involved the application of the automobile exception.[64] The Chief Justice reasoned that the police, pursuant to the information they had received, had probable cause to believe that the green suitcase contained contraband; they did not possess a more vague and generalized belief that an illegal substance could be located anywhere in the vehicle.[65] The fact that the suitcase was placed into the trunk of an automobile was viewed as a fortuitous circumstance making the relationship between the vehicle and the luggage purely coincidental.[66] The Chief Justice maintained, therefore, that like *Chadwick*, the instant case failed to answer the question of whether the warrantless search of containers found in automobiles, validly stopped by police on a highway or street, was cognizable under the automobile exception.[67] Had the factual circumstances permitted the assertion of the exception, it was questionable whether such an extension would be appropriate.[68]

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[63] *Id.* at 767 (Burger, C.J., concurring). The Chief Justice noted that the Court was merely affirming the proposition, first recognized in *Chadwick*, that individuals enjoy a "legitimate expectation of privacy in the contents of a trunk or suitcase . . . [which] is not diminished simply because the owner's arrest occurs in a public place." *Id.* at 766-67 (Burger, C.J., concurring).

[64] *Id.* at 766. *See* note 49 *supra*.

[65] 442 U.S. at 767 (Burger, C.J., concurring). The original circumstances, providing the officers with probable cause to believe that the suitcase alone was the locus of the contraband, could not be altered by the fact that it was ultimately removed from an automobile. *Id.*

[66] *Id.* (Burger, C.J., concurring). In order to determine the applicability of the automobile exception, the district court in *Chadwick* focused on the length and quality of the contact which the container had with the automobile as distinguished from the quantum of probable cause possessed by the police. United States v. Chadwick, 393 F. Supp. 763, 772 (D. Mass. 1975), *aff'd*, 532 F.2d 773 (1st Cir. 1976), *aff'd*, 433 U.S. 1 (1977). For a discussion of that analysis, see note 42 *supra*.

[67] 442 U.S. at 767-68 (Burger, C.J., concurring). The automobile exception could be properly invoked only when the police had probable cause to believe that the vehicle, and not receptacles therein, contained contraband or evidence of a crime. *Id.* (Burger, C.J., concurring). Since those circumstances were not present in this case, it was not appropriate to decide the issue. *Id.* (Burger, C.J., concurring).

[68] *Id.* (Burger, C.J., concurring). The Chief Justice stated:

> I am not sure whether . . . [the existence of probable cause to believe contraband was located somewhere in the vehicle] would . . . [present] a stronger or weaker case for requiring a warrant to search the suitcase when a warrantless search of the automobile is otherwise permissible.

Id. at 768 (Burger, C.J., concurring).

As in *Chadwick*, Justices Blackmun and Rehnquist dissented from the majority opinion.[69] Finding that luggage transported in an automobile is as mobile as the vehicle itself and not deserving of any greater expectation of privacy than a locked glove compartment or trunk, the dissent maintained that these containers should be equally amenable to a warrantless search.[70] By arbitrarily drawing the line of permissible warrantless searches between those directed only at the vehicle itself and those which focused on containers found therein, the dissent concluded that the Court had engaged in nothing more than a mere exercise in futility, elevating form over substance, with the possible result of placing law enforcement officials operating in the field in very precarious positions.[71] Lastly, the dissent was critical of the fact that the Court had limited its decision to personal luggage, thereby leaving unresolved the question of which types of containers must be accorded the full scope of fourth amendment protections.[72] To eliminate the confusion and uncertainty which had been generated by this area of criminal procedure, and which was only exacerbated by the *Sanders* decision, the dissent suggested the adoption of a clear cut rule which would permit the warrantless search and seizure of any type of personal property found in an automobile.[73]

The Supreme Court failed to take advantage of the opportunity to definitively answer the "debatable question" which had been posed almost a decade earlier in *Chambers*.[74] There, the Court left unresolved the question of whether an immediate warrantless search of an object was more of an encroachment on fourth amendment rights

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[69] *Id.* at 768 (Blackmun, J., dissenting). For a brief discussion of the dissenting opinion in *Chadwick*, see note 46 *supra*.

[70] 442 U.S. at 769 (Blackmun, J., dissenting).

[71] *Id.* at 770-71 (Blackmun, J., dissenting). By way of illustration, the dissent noted that a police officer approaching a properly stopped automobile would have to evaluate a multiplicity of circumstances. *Id.* at 771 (Blackmun, J., dissenting). For example, if probable cause to arrest the occupants exists, then the officer could search any objects which were within the arrestee's immediate control. *Id. But see* note 54 *supra*. If there is probable cause to believe that the vehicle contains contraband or evidence of a crime, the officer can search the entire interior as well as the locked compartments; however, under *Chadwick* and *Sanders*, any "suitcase-like object" found in the car but outside the immediate control area of the occupants cannot be searched without a warrant. 442 U.S. at 771 (Blackmun, J., dissenting). Further, if the officer has probable cause to arrest persons in the front seat of the car, is a suitcase located on the back seat within the area of immediate control, thus avoiding the *Chadwick-Sanders* rule? *Id.* (Blackmun, J., dissenting).

[72] 442 U.S. at 768, 772 (Blackmun, J., dissenting). *See* note 52 *supra*. "Still hanging in limbo and probably soon to be litigated are the briefcase, the wallet, the package, the paper bag, and any other kind of container." 442 U.S. at 768 (Blackmun, J., dissenting).

[73] 442 U.S. at 772 (Blackmun, J., dissenting).

[74] *See* notes 36 & 37 and 57 & 58 *supra* and accompanying text.

than the seizure and retention of the item until a warrant was procured.[75] In *Sanders*, instead of analyzing which of these procedures would be more offensive to the individual's constitutional rights, the Court focused on the burdens which the police would have to endure should they be required to impound and hold all automobiles pending the issuance of a warrant.[76] Therefore, it is still unclear whether the immediate search of a container found within an automobile is more of an abhorrent interference with individual rights and liberties than would be its warrantless seizure and impoundment. What is clear, however, is that the warrantless seizure and detention of personal luggage is the required course of action because the police, not the individual, would be minimally inconvenienced thereby.[77]

Additionally, as the dissent pointed out, the Court failed to adequately distinguish, in terms of privacy interest, between personal luggage and an " 'integral part of the automobile;' "[78] that is, the trunk, glove compartment, concealed areas under the dashboard, and behind the upholstering of the seats.[79] The unanswered question that arises is why should these sections of an automobile be accorded a lesser expectation of privacy than luggage or other containers that are found within them?[80] Unlike the rest of the vehicle, these areas are not in plain view, nor is their inspection necessary to ensure the safe operation of the automobile.[81] The additional fact that a validly impounded automobile and its integral parts are no more mobile than any other type of personalty makes the application of varying fourth amendment standards questionable.

The most troubling aspect of the *Sanders* decision is the recognition that different types of containers, depending upon their nature, will be accorded inconsistent levels of fourth amendment protection.[82] Distinctions will have to be drawn between various types of

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[75] *See* Chambers v. Maroney, 399 U.S. at 51-52.

[76] 442 U.S. at 765-66 n.14. For a description of these burdens, see note 59 *supra*.

[77] 442 U.S. at 766. *See* notes 58-60 *supra* and accompanying text.

[78] 442 U.S. at 772 (Blackmun, J., dissenting) (quoting 442 U.S. at 763). For a discussion of the dissenting opinion, see notes 69-73 *supra* and accompanying text.

[79] 442 U.S. at 763.

[80] As Justice Marshall has noted:

> [i]t would be wholly unrealistic to say that there is no reasonable and actual expectation in maintaining the privacy of closed compartments of a[n] . . . automobile, when it is customary for people in this day to carry their most personal and private papers and effects in their automobiles from time to time.

South Dakota v. Opperman, 428 U.S. 364, 388 n.6 (1976) (Marshall, J., dissenting).

[81] *See id.* at 386-87 (Marshall, J., dissenting). These are reasons which have traditionally explained, at least in part, why an automobile does not enjoy as complete an expectation of privacy as do some other instrumentalities.

[82] 442 U.S. at 764-65 n.13. *See* notes 62-72 *supra* and accompanying text.

containers that could be encountered in the context of an automobile search. An immediate search may be the appropriate procedure in one case, while a seizure and immobilization of the container will be required in another. The determinative factor will, in most cases, be a judge's subjective opinion that a certain type of container can support a reasonable expectation of privacy.[83] Reliance upon such a tenuous and discretionary standard, renders the law of search and seizure more susceptible to inconsistent and irreconcilable results.

Although the Court intended to alleviate much of the turmoil and confusion engendered by the *Chadwick* decision, it only succeeded in creating a deeper abyss of uncertainty. While the scope of the automobile exception has been severely narrowed with respect to personal luggage, its boundaries may yet expand or contract in certain situations depending upon the type of container involved. In our society, the automobile has become an instrumentality which touches and affects almost every person on a day-to-day basis. As such, rules which dictate the extent to which law enforcement officials can intrude upon an individual's possessory and privacy interests in their vehicles should be unambiguous and uniform. The result in *Sanders*, therefore, should have been either to authorize the warrantless search of any personal property found in an automobile pursuant to the *Carroll-Chambers* exception, or to eliminate the vacuous distinction between personal luggage and the locked compartments of motor vehicles by requiring a warrant for the search of both.

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[83] *See, e.g.*, United States v. Gooch, 603 F.2d 122, 125 (10th Cir. 1979) (treating briefcase found on airplane like an item of personal luggage, court found greater expectation of privacy in its contents, than in contents of plane generally); United States v. Meier, 602 F.2d 253, 255 (10th Cir. 1979) (invalidating search of a closed backpack lawfully seized in searching defendant's automobile). In *Meier*, the court noted that "[a] backpack would seem to be governed by the suitcase rule, as a backpack, like a suitcase, is a 'repository for personal items when one wishes to transport them.' " *Id. Cf.* United States v. Neumann, 585 F.2d 355, 360 (8th Cir. 1978) (upholding warrantless search of department store box found in automobile). The court was of the opinion that "[t]here is simply an insufficient expectation of privacy in an unsecured cardboard box sitting in plain view in the passenger compartment of an automobile." *Id.*