

period required for the police to obtain a warrant.” *Michigan v. Thomas*, 458 U.S. 259, 261 (1982).

Also, the Court ruled that the search must be reasonably contemporaneous with the stop, so that it was not permissible to remove the vehicle to the stationhouse for a warrant less search at the convenience of the police. *Preston v. United States*, 376 U.S. 364 (1964).

The Fourth Amendment is applicable “whenever a police officer accosts an individual and restrains his freedom to walk away.” *Id.* At 16.

A Fourth Amendment “seizure” of the person, the Court determined, is the same as a common law arrest; there must be either application of physical force (or the laying on of hands), or submission to the assertion of authority. *United State v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

“only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that ‘seizure’ has occurred.” 392 U.S. at 19, n.16.

“only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

But consent will not be regarded as voluntary when officer asserts his official status and claim of right and the occupant yields to these factors rather than makes his own determination to admit officers. *Amos v. United States*, 255 U.S. 313 (1921).

“A search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest. But there must be something more in the way of necessity than merely a lawful arrest.” *Id.* At 708.

An illegal search and seizure may be criminally actionable and officers undertaking one thus subject to prosecution, but the examples when officers are criminally prosecuted for overzealous law enforcement are extremely rare. *Edwards, Criminal Liability for Unreasonable Searches and Seizures*, 41 Va. L. Rev. 621 (1955).

Police officers acting under color of state law who violate a person’s Fourth Amendment rights are subject to a suit for damages and other remedies under a civil rights statute in federal courts. 42 U.S.C. S1983 (1964). *Monroe v. Pape*, 365 U.S. 167 (1961).

The Supreme Court has recently held that a right to damages for violation of Fourth Amendment rights arises by implication out of the guarantees secured and that this right is enforceable in federal courts. *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971)