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Constitutional Quiz

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tion except in a few limited circumstances; thus the seizure of the person, "the taking hold of one's person," should logically be limited in the same manner. *Watson,* 44 L.W. 4112, 4117 (1976). He, however, acceded to the Court's conclusion on the validity of the arrest and also enumerated the practical problems in law enforcement if the Court of Appeals' decision were allowed to stand. Justice Powell concluded that the Court's sustaining of the warrantless arrest upon probable cause, "...despite the resulting divergence between the constitutional rule governing searches and that now held applicable to seizures of the person..." was justified. *Watson,* 44 L.W. 4112, 4118 (1976).

Justice Marshall, joined by Justice Brennan, filed a dissenting opinion, based on the thesis that the Court did not decide the case on the narrow question presented. Justice Marshall determined that the arrest was valid since exigent circumstances were present (the officers had knowledge that a felony was being committed in their presence and that the suspect possessed the incriminating evidence).

However, Justice Marshall criticized the historical precedent which the Court relied upon in approving the arrest of Watson. He analyzed common law principles and concluded that "...the lesson of the common law, and those courts in this country that have accepted its rule, is an ambiguous one..."; further, he criticized the Court's "unblinking literalism" in its analysis. *Watson,* 44 L.W. 4112, 4121 (1976).

Next, citing *Marbury v. Madison,* 1 Cranch 137 (1803), as authority, Justice Marshall was critical of the deference the Court pays to state and federal statutes which have codified the common law rule. He emphasized that the existence of a statute is no defense to an unconstitutional practice.

He then examined the warrant requirement of the Fourth Amendment. Justice Marshall agreed with Justice Powell that, logically, arrests and searches should be treated similarly in regard to this warrant requirement. The privacy rights of citizens are certainly better protected when a warrant is required for an arrest. Further, the legitimate governmental interest in law enforcement is not unduly burdened by this requirement. In sum, when a warrant can be procured, it should be. Justice Marshall stated, "I believe the proper result is application of the warrant requirement, as it has developed in the search context, to all arrests." *Watson,* 44 L.W. 4112, 4124-4125 (1976). In reference to the search issue, Justice Marshall suggested that because it was of some complexity and had not been thoroughly briefed for the Court, the issue should be remanded.

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Constitutional Quiz

by Ronald Shapiro

1. One spouse's consent to a search of the family residence, if voluntary and intelligent, renders the search valid, even if it was made without a warrent, without probable cause and without a warning from the police that such a search can legally be refused.

Answer: True. Anyone with control over the premises can consent to its search; knowledge of the legal right to refuse is not always required for a valid consent.

2. Police have rented a hotel room next to a room in which they have probable cause to believe a major narcotics sale will take place. They may, without a warrant, place a device on the wall of their room to overhear the talk in the next room.

Answer: False. The police must obtain a court order.

3. Police arrest A, physically torture him, and obtain a statement revealing the location of evidence implicating B and C as well as A in a robbery. The evidence is admissible against B and C.

Answer: True. The Fourth Amendment rights of B and C have not been violated; consequently, they lack standing to challenge the torture of A.

4. It is not constitutionally required, even in a serious felony prosecution, for a state to require a twelve-person jury or a unanimous verdict of the jurors.

Answer: True. Neither is necessary for the interposition of the "commonsense judgment" of a group of laymen between the accused and his accuser.

5. The Fifth Amendment privilege against self-incrimination can be invoked by a witness at a Congressional inquiry.

Answer: True. Unless the witness is granted immunity, as was John Dean when he testified before the Watergate Committee.

6. The Constitution vests the entire "power of pardon and reprieves for offenses" against the United States in the President.

Answer: True. Except in cases of impeachment.

7. A state judge's salary is immune from federal income tax.

Answer: False. The income tax has no real impact on the state's sovereign functions.

8. Actions by a state which give preference to local commerce over commerce from out of state are prohibited.

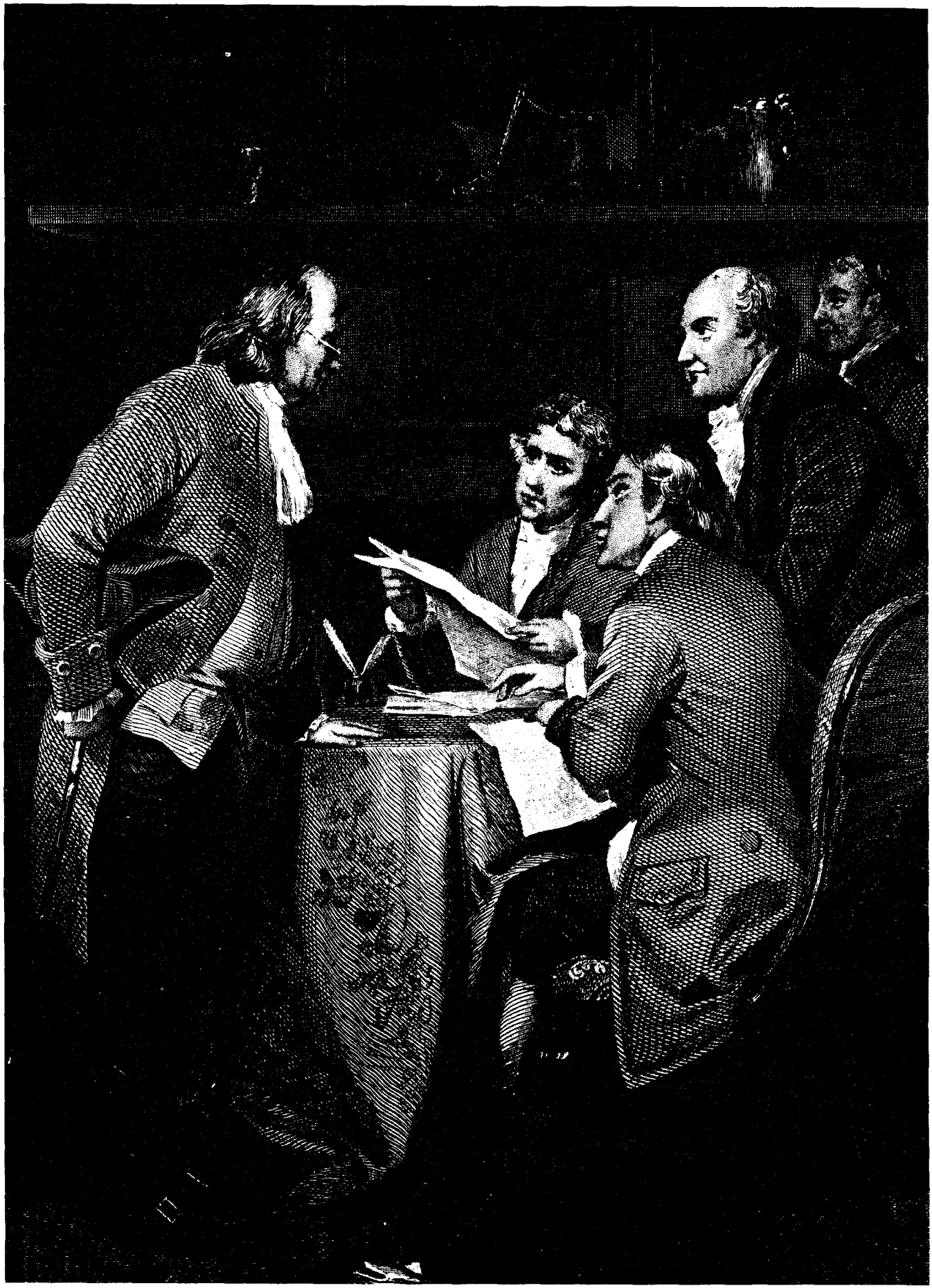
Answer: True, unless Congress permits such preferences in the legislation governing such commerce.

9. The burning of draft cards is a protected form of free speech under the First Amendment and thus cannot constitutionally be prosecuted.

Answer: False. Merely because the person burning the draft card thereby intends to express an idea, his conduct is not considered speech protected by the First Amendment.

10. The abstract advocacy of a doctrine — even that the government should be forcibly overthrown — is constitutionally protected as free speech.

Answer: True. A "clear and present danger of violence" is not presented.



11. The distributor of a film found to be without serious literary, artistic, political or scientific value can be convicted on criminal charges.

Answer: True, if the average person applying contemporary community standards, would also find that the work, taken as a whole, appeals to prurient interests, and if the work depicts or describes sexual conduct in a patently offensive way.

12. A loyalty oath requirement, which a person is required to take in order to get a job, would be an invalid infringement of freedom of belief and association, and thus unconstitutional.

Answer: False. An individual can be barred from employment if he has knowledge of the improper objective of an organization of which he is a member and has a specific intent to promote its illegal aims.

13. Sunday closing laws, which would economically burden the religious freedom of Orthodox Jewish businessmen who comply with their religious laws by closing on Saturday, are unconstitutional because the First Amendment provides that "Congress shall make no law...prohibiting the free exercise (of religion)."

Answer: False. Such statutes do not make unlawful the religious practices of Orthodox Jewish businessmen. Instead, they regulate secular commercial activity, albeit making the practice of their religious beliefs more expensive for Orthodox Jewish merchants.

14. A law requiring children to attend school until age sixteen is unconstitutional when applied to the Amish, who forbid their children from obtaining formal education beyond the eighth grade, because of the free exercise of religion clause referred to in the previous question.

Answer: True. A compulsory education law would gravely endanger, if not destroy, the Amish's free exercise of their deep religious convictions, which are intimately related to their daily living.

15. The individual's right to "privacy" is expressly granted in the Constitution.

Answer: False. It is viewed as "emanating from the totality of the constitutional scheme under which we live."

Success in this quiz is not a failproof litmus test of one's knowledge of our constitutional system. The Supreme Court provided answers to these questions only after persuasive arguments had been presented on both sides of the issues. We must, however, be sensitive to the views which framed those arguments to know the true meaning of our Bicentennial.

Thomas Jefferson, the principal draftsman of the Declaration of Independence, believed that the people, themselves, were the safest and most virtuous — though not always the wisest — depository of power. Education, he felt, would perfect their wisdom. Where education fell short, the Bill of Rights would provide the judiciary with the power to preserve the rights of the minority, and, ultimately, the society at large. But a judiciary standing alone in defense of individual liberties, Jefferson warned us, would provide an inadequate protection against tyranny. The American people must also be aware why it is necessary to protect the zealot's right to speak, or the freedom from unreasonable search of an accused. Public apathy and ignorance about the workings of our government and our basic constitutional freedoms makes us vulnerable, as recent experience has revealed, to officials who ignore the constitutional limits on their power.

All of which is not to say that we should forbear celebrating the Fourth of July next summer until we can handle the above questions with the aplomb of an Archibald Cox. The events of recent years have served to emphasize our need for an occasion designed to rejuvenate our faith in our institutions and our country. What will make that celebration more meaningful and more in keeping with the first celebration of the Declaration of Independence will be an increased understanding and appreciation of those ideals which our forefathers implemented two hundred years ago.