legislature, is under the commerce clause the final arbiter of the competing demands of state and national interests." [1134]

The Chief Justice made clear at length that the test to be applied was a balancing one, stating that, in order to determine whether the challenged regulation was permissible, "matters for ultimate determination are the nature and extent of the burden which the state regulation of interstate trains, adopted as a safety measure, imposes on interstate commerce, and whether the relative weights of the state and national interests involved are such as to make inapplicable the rule, generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference." [1135]

The test today continues to be the Stone articulation, although the more frequently quoted encapsulation of it is from *Pike v. Bruce Church, Inc.*: "Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." [1136]

Obviously, the test requires "evenhanded[ness]." Discrimination in regulation is another matter altogether. When on its face or in its effect a regulation betrays "economic protectionism"—an intent to benefit in-state economic interests at the expense of out-of-state interests—then no balancing is required. "When a state statute clearly discriminates against interstate commerce, it will be struck down . . . unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism, ... Indeed, when the state statute amounts to simple economic protectionism, a 'virtually *per se* rule of invalidity' has applied." [1137] Thus, an Oklahoma

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[1134] 325 U.S. at 769.

[1135] 325 U.S. at 770–71.

[1136] 397 U.S. 137, 142 (1970) (citation omitted).

[1137] Wyoming v. Oklahoma, 502 U.S. 437, 454 (1992) (quoting City of Philadelphia v. New Jersey, 437 U.S. 617, 624 (1978)). *See also* Brown-Forman Distillers Corp. v. New York State Liquor Auth., 476 U.S. 573, 579 (1986). In Maine v. Taylor, 477 U.S. 131 (1986), the Court upheld a protectionist law, finding a valid justification aside from economic protectionism. The state barred the importation of out-of-state baitfish, and the Court credited lower-court findings that legitimate ecological concerns existed about the possible presence of parasites and nonnative species in baitfish shipments.