cinctly, "statutes create many classifications which do not deny equal protection; it is only 'invidious discrimination' which offends the Constitution." [1386]

How then is the line between permissible and invidious classification to be determined? In *Lindsley v. Natural Carbonic Gas Co.*,[1387] the Court summarized one version of the rules still prevailing. "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." Especially because of the emphasis upon the necessity for total arbitrariness, utter irrationality, and the fact that the Court will strain to conceive of a set of facts that will justify the classification, the test is extremely lenient and, assuming the existence of a constitutionally permissible goal, no classification will ever be upset. But, contemporaneously with this test, the Court also pronounced another lenient standard which did leave to the courts a judgmental role. In *F.S. Royster Guano Co. v. Virginia*,[1388] the court put forward the following test: "[T]he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legisla-

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[1386] Ferguson v. Skrupa, 372 U.S. 726, 732 (1963); Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955).

[1387] 220 U.S. 61, 78–79 (1911), *quoted in full* in Morey v. Doud, 354 U.S. 457, 463–64 (1957). Classifications which are purposefully discriminatory fall before the Equal Protection Clause without more. *E.g.*, Barbier v. Connolly, 113 U.S. 27, 30 (1885); Yick Wo v. Hopkins, 118 U.S. 356, 373–74 (1886). *Cf.* New York City Transit Auth. v. Beazer, 440 U.S. 568, 593 n.40 (1979). Explicit in all the formulations is that a legislature must have had a permissible purpose, a requirement which is seldom failed, given the leniency of judicial review. *But see* Zobel v. Williams, 457 U.S. 55, 63–64 (1982), and id. at 65 (Justice Brennan concurring).

[1388] 253 U.S. 412 (1920).