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buyer's objections;⁵¹ and right to adequate assurance of performance.⁵²

Once a farmer is understood to be a merchant under the UCC, regarding him as a mere "tiller of the soil" in other situations becomes difficult. Consequently, doors once opened to the farmer as consumer rather than businessman may now close.⁵³

III. CONCLUSION

As a result of the decision in *Nelson v. Union Equity Co-Operative Exchange*, for all purposes relating to the transaction under the UCC, and arguably for purposes extending beyond the UCC, the farmer who sells an annual cash crop for his livelihood is a merchant. The decision stems from a recognition by the court of the professional nature of the sale of a crop for a living, and a finding that such a professional nature represents a knowledge of goods and practices that parties contracting with the farmer are entitled to rely upon. The holding balances the burdens on both the farmer and the purchaser, concluding that requiring the increasingly sophisticated farmer to read his mail and timely reject unsatisfactory proposals is minimal compared to the burdens which would be imposed upon the market were a contrary decision reached.

Mary Gallaspy Eads

Fifth Amendment Protection Against Gender-Based Discrimination in the Distribution of Survivors' Benefits: *Califano v. Goldfarb*

Mrs. Hannah Goldfarb paid all required social security taxes for twenty-five years before her death in 1968. Her widower, Mr. Leon Goldfarb, applied for survivors' benefits pursuant to 42 U.S.C. § 402(f)(1)(D).¹ His

51. *Id.* § 2.605(a)(2).

52. *Id.* § 2.606(b).

53. For example, an Illinois appellate court in *Meeker v. Fowler*, 35 Ill. App. 3d 313, 341 N.E.2d 412, 417 (1976), implied that if a farmer is a merchant under the UCC, a sale to him under a retail installment contract is invalid, being for a disallowed "commercial or business use." The Texas retail installment sales provisions contain similar language. See TEX. REV. CIV. STAT. ANN. art. 5069—6.01(a) (Vernon 1971) (" '[g]oods' means all tangible personal property when purchased primarily for personal, family or household use and not for commercial or business use").

1. The Act provides:

The widower . . . of an individual who died a fully insured individual, [shall receive benefits] if such widower—

(D)(i) was receiving at least one-half of his support . . . from such individual at the time of her death, or, if such individual had a period of disability which did not end prior to the month in which she died, at the time such period began or at the time of her death, and filed proof of such support within two years after the date of such death . . . , or

(ii) was receiving at least one-half of his support . . . from such individual at the time she became entitled to old-age . . . insurance benefits . . . , and filed proof of such support within two years after the month in which she became entitled to such benefits

42 U.S.C. § 402(f)(1)(D) (1970).

claim was denied for failure to meet the Act's requirement, applicable only to widowers, that he be receiving at least one-half of his support from his wife when she died. Mr. Goldfarb brought suit,² alleging the dependency requirement to be an unconstitutional violation of the equal protection guarantee of the fifth amendment due process clause³ in that the Act allowed survivors' benefits to be paid to a widow of a deceased husband covered by the Act without a dependency test.⁴ A three-judge District Court for the Eastern District of New York held that the differing treatment of female and male wage earners embodied in the statute constituted invidious discrimination against female wage earners by affording them less protection for their surviving spouses than is provided to male employees.⁵ *Held, affirmed*: The dependency provision discriminates against female wage earners by requiring them to pay social security taxes that afford less protection for their spouses than results from equal payments by similarly situated male wage earners and, hence, is violative of the equal protection guarantee of the fifth amendment due process clause. *Califano v. Goldfarb*, 97 S. Ct. 1021, 51 L. Ed. 2d 270 (1977).

I. THE FIFTH AMENDMENT'S APPLICATION TO GENDER-BASED DISCRIMINATION

The effectiveness of the equal protection guarantee as a tool to combat gender-based discrimination has corresponded to the Court's choice of test and accompanying level of scrutiny when determining whether or not there has been a constitutional violation.⁶ The Warren Court expanded the use of the equal protection guarantee and developed the "two-tier" method of analysis.⁷ Legislation containing a classification which is deemed "suspect"⁸ or which affects an interest deemed "fundamental,"⁹ is subjected to

2. Mr. Goldfarb did not pursue an administrative appeal of the denial of his application because such denial was based on a clear statutory requirement, rendering further administrative action futile. The initial denial therefore was final for purposes of the district court's jurisdiction under *id.* § 405(g).

3. U.S. CONST. amend. V: "No person shall . . . be deprived of life, liberty, or property, without due process of law" An equal protection analysis under the fifth amendment is substantially the same as that under the fourteenth amendment. *See Buckley v. Valeo*, 424 U.S. 1 (1976); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Schlesinger v. Ballard*, 419 U.S. 498 (1975); *Jimenez v. Weinberger*, 417 U.S. 628 (1974); *Frontiero v. Richardson*, 411 U.S. 677 (1973). *See also Schneider v. Rusk*, 377 U.S. 163 (1964); *Bolling v. Sharpe*, 347 U.S. 497 (1954). *But see Hampton v. Mow Sun Wong*, 96 S. Ct. 1895, 1904, 48 L. Ed. 2d 495, 507 (1976), in which Mr. Justice Stevens stated, "Although both Amendments require the same type of analysis, . . . the two protections are not always coextensive. Not only does the language of the two Amendments differ, but more importantly, there may be overriding national interests which justify selective federal legislation that would be unacceptable for an individual state."

4. 42 U.S.C. § 402(e)(1) (1970).

5. *Goldfarb v. Secretary of HEW*, 396 F. Supp. 308 (E.D.N.Y. 1975). The decision also applied to 42 U.S.C. § 402(c)(1)(C) (1970) which imposes a dependency requirement on husbands of covered female wage earners applying for old-age benefits. Under *id.* § 402(b) wives applying for such benefits are not required to prove dependency. 396 F. Supp. at 309.

6. *See generally* Gunther, *The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972); Wilkinson, *The Supreme Court, The Equal Protection Clause, and the Three Faces of Constitutional Equality*, 61 VA. L. REV. 945 (1975). *See also Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

7. *See* Gunther, *supra* note 6, at 8.

8. Statutory classifications which are formally suspect are: race (*see, e.g., Loving v. Virginia*, 388 U.S. 1 (1967); *Brown v. Board of Educ.*, 347 U.S. 483 (1954)); alienage (*see, e.g., In re Griffiths*, 413 U.S. 717 (1973); *Graham v. Richardson*, 403 U.S. 365 (1971)); ancestry (national origin) (*see, e.g., Graham v. Richardson*, 403 U.S. 365 (1971); *Korematsu v. United States*, 323 U.S. 214 (1944)).

9. Fundamental interests include: The right to vote (*see, e.g., Dunn v. Blumstein*, 405

a test of strict judicial scrutiny. To withstand such examination legislation must advance a compelling state interest obtainable only by the use of such classification.¹⁰ Classifications not deemed suspect or affecting fundamental rights are approved if they bear a rational relationship to a permissible state objective.¹¹ Classifications rarely withstand strict scrutiny, and seldom fail when judged under the rationality test.¹²

The Burger Court has nominally adhered to the two-tier system of equal protection review,¹³ but its decisions reveal a mounting discontent with the rigidity of the two-tier formula.¹⁴ In the area of sex classifications, the Court has attempted to reach equitable results without far-reaching doctrinal consequences.¹⁵ The Court has thus declined to make sex a suspect classification; yet while purporting to apply rational-basis scrutiny the decisions reveal it has instead utilized an unspecified level of heightened review.¹⁶

In *Reed v. Reed*¹⁷ the Court refused to find sex classifications suspect, thereby rejecting the test of strict scrutiny. While purporting to follow the traditional reasonableness test, however, the Court sustained the discrimination claim and required that such classifications "be reasonable, not arbitrary, and must rest upon some ground of difference having a fair *and substantial* relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."¹⁸

In *Frontiero v. Richardson*,¹⁹ a case in which administrative convenience was the proffered justification for the gender-based classification, four

U.S. 330 (1972); *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621 (1969)); the right to interstate travel (*see, e.g., Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969)). *But see* *Sosna v. Iowa*, 419 U.S. 393 (1975) (Court upheld a requirement that party reside in state for one year before bringing divorce action against non-resident); the right to procreation (*see, e.g., Skinner v. Oklahoma*, 316 U.S. 535 (1942)); the right to freedom of association (*see, e.g., Gibson v. Florida*, 372 U.S. 539 (1963); *NAACP v. Alabama*, 357 U.S. 449 (1958)).

10. *See* *Wilkinson, supra* note 6, at 951. There has been judicial restraint particularly in the social and economic fields not affecting freedoms guaranteed by the Bill of Rights. *See, e.g., New Orleans v. Dukes*, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911).

11. *See* *Wilkinson, supra* note 6, at 951.

12. *See* *Gunther, supra* note 6, at 8.

13. *See* *Wilkinson, supra* note 6, at 951.

14. *Id.* at 952; *see* *Gunther, supra* note 6, at 17. Mr. Justice Marshall, for example, favors a "sliding scale" scrutiny, the rigor of which would vary with the importance of the interest involved. *See, e.g., San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1, 98-99 (1973) (Marshall, J., dissenting); *Dandridge v. Williams*, 397 U.S. 471, 520-21 (1970) (Marshall, J., dissenting). For criticism of the two-tier approach see also *Craig v. Boren*, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976) (Powell and Stevens, JJ., concurring).

15. *See* *Wilkinson, supra* note 6, at 951.

16. *Id.* at 952; *see* *Gunther, supra* note 6, at 18.

17. 404 U.S. 71 (1971). In *Reed* a woman challenged a mandatory provision of the Idaho Probate Code that gave preference to men over women when equally qualified persons applied for an appointment as administrator of a decedent's estate.

18. *Id.* at 76 (emphasis added). The Court so held despite an apparently rational objective of reducing the workload of the probate courts by eliminating one class of contests. *See* *Gunther, supra* note 6, at 34.

19. 411 U.S. 677 (1973). The challenged statute provided that a female member of the armed services could receive a housing allowance and medical benefits for her husband only if he was dependent on her for more than one-half of his support. Married male members of the service, however, received these benefits automatically because their wives were presumed to be dependent.

Justices²⁰ utilized strict scrutiny to strike the classification. Four others,²¹ however, believed this unnecessary and held the classification would fail under the test articulated in *Reed*.²²

With *Reed* and *Frontiero*, some observers concluded that the Court was moving conservatively, in a fashion similar to its racial segregation cases, towards a judgment that sex classifications were discriminatory and could be justified only by a showing of a compelling state interest.²³ Any such trend was halted in *Kahn v. Shevin*.²⁴ In *Kahn* the Court was confronted with the problem of discrimination in favor of women; such discrimination was termed "benign." A widower challenged a Florida provision granting widows, but not widowers, a property tax exemption of five hundred dollars. The plurality in *Frontiero* which had invoked strict scrutiny splintered.²⁵ Mr. Justice Douglas in the majority opinion recited the fair and substantial relation standard of *Reed*,²⁶ and concluded: "We deal here with a state tax law reasonably designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for which that loss imposes a disproportionately heavy burden."²⁷ It has been observed, however, that in the age and under the prevailing attitudes when this provision was passed, this conclusion taxes credulity.²⁸ Further, Mr. Justice Brennan stated that if the governmental objective was to reduce the disparity in economic condition between men and women caused by the long history of discrimination against women, such an ameliorative purpose would be a compelling state interest.²⁹ Consequently, after *Kahn*, if the legislation could be found ameliorative, even hypothetically so, it would not violate the equal protec-

20. Justices Brennan, Douglas, Marshall, and White.

21. Mr. Chief Justice Burger and Justices Blackmun, Powell, and Stewart.

22. "It is unnecessary for the Court in this case to characterize sex as a suspect classification, with all of the far-reaching implications of such a holding." 411 U.S. at 691-92; see note 15 *supra* and accompanying text. Additionally, Mr. Chief Justice Burger, Mr. Justice Blackmun, and Mr. Justice Powell preferred leaving the determination of whether to invoke strict judicial scrutiny with the state legislatures who were debating the equal rights amendment. 411 U.S. at 692.

23. B. BABCOCK, A. FREEDMAN, E. NORTON & S. ROSS, *SEX DISCRIMINATION AND THE LAW, CAUSES AND REMEDIES* 123 (1975) [hereinafter cited as BABCOCK].

24. 416 U.S. 351 (1974). The challenged statute, FLA. STAT. ANN. § 196.191(7) (West 1971), exempted from the state property tax "[p]roperty to the value of five hundred dollars to every widow and to every person who is a bona fide resident of the state and has lost a limb or has been disabled in war or military hostilities or by misfortune."

25. BABCOCK, *supra* note 23, at 124; see note 20 *supra* and accompanying text.

26. 416 U.S. at 355.

27. *Id.*

28. The discrimination between surviving spouses originated in 1885. At that time women were not even allowed to vote. In the context of the 19th century presumption that females were inferior to males, attributing such an ameliorative purpose to the classification must be regarded as a hypothetical rationalization. 97 S. Ct. at 1035, 51 L. Ed. 2d at 287 (Stevens, J., concurring). See Note, *Preferential Economic Treatment for Women: Some Constitutional and Practical Implications of Kahn v. Shevin*, 28 VAND. L. REV. 843, 850 (1975). See also Erickson, *Kahn, Ballard, and Wiesenfeld: A New Equal Protection Test in "Reverse" Sex Discrimination Cases?*, 42 BROOKLYN L. REV. 1, 14 (1975).

29. 416 U.S. at 358-59. Mr. Justice Brennan, however, found the statute overinclusive since wealthy widows could benefit as well as poor ones, and thus dissented. The widow's preference would have been accepted by Mr. Justice Brennan had there been an eligibility test. *Id.* at 360. Mr. Justice Brennan's conception of what would constitute a compelling justification for a sex classification is alarming. In effect, it substitutes discrimination against men for discrimination against women rather than substituting individual treatment for overbroad sex classification. See BABCOCK, *supra* note 23, at 124.

tion guarantee.³⁰

In *Weinberger v. Wiesenfeld*³¹ the Court developed a technique to avoid *Kahn* and eroded portions of the decision without overruling it. The *Kahn* ameliorative purpose argument as a means to withstand scrutiny was avoided by finding the relevant discrimination to be against women, therefore precluding the possibility of the law's having an ameliorative purpose.³² Moreover, the Court required justification beyond "the mere recitation of a benign, compensatory purpose" to uphold a sexually discriminatory statute.³³ Instead, the Court examined the articulated purpose as it emerged from the statutory scheme itself and from the legislative history, and found no actual ameliorative purpose.³⁴

II. CALIFANO V. GOLDFARB

*Califano v. Goldfarb*³⁵ presented a dependency test conditioning eligibility for the Old-Age, Survivors, and Disability Benefits program, which was applicable to widowers but not widows. As in *Wiesenfeld*,³⁶ there was a gender-based distinction for eligibility for social security benefits, and like *Frontiero*,³⁷ the challenged distinction was a dependency test. Mr. Justice Brennan, joined by three other Justices,³⁸ found the case to present an equal

30. See *Erickson*, *supra* note 28, at 10. The danger of *Kahn* is that it created the rationale of remedying past discrimination as a constitutional justification for statutory sex classifications which, in the guise of benefiting women, actually discriminate against them. The Court has been criticized because laws that purport to help women actually encourage the same sex stereotypical thinking that perpetuates discrimination against women. Paternalism is no less offensive than other more easily identifiable forms of sex discrimination. See *BABCOCK*, *supra* note 23, at 124; *Erickson*, *supra* note 28, at 13; Ginsburg, *Gender in the Supreme Court: The 1973 and 1974 Terms*, 1975 SUP. CT. REV. 1, 6.

31. 420 U.S. 636 (1975). Stephen Wiesenfeld, a widower, was denied "Mother's insurance benefits" under 42 U.S.C. § 402(g) (1970) because that section authorized the payment to be paid only to a "mother" who "has in her care a child of such [deceased] individual."

32. 420 U.S. at 645. See *Erickson*, *supra* note 28, at 36, 52. The focus of the Court thus becomes crucial. If the statute is designed to compensate women for past discrimination, the fact that it discriminates against men does not make it constitutionally defective. By finding discrimination to be against women, the Court avoids any possible compensatory justification.

33. 420 U.S. at 648.

34. *Id.* The relative unanimity of the opinion in the case can be attributed to Mr. Justice Brennan's exhaustive analysis of the statute's legislative history, convincing the Court that the true purpose of the statute was to assure care for the child, not for the woman. The question remained unanswered as to what level of scrutiny would apply when this element was missing. Writing for the Court, Mr. Justice Brennan did not invoke strict scrutiny, as he had advocated in *Frontiero* and *Kahn*, but instead relied on the rationality approach of *Reed*. 420 U.S. at 653. For a discussion of *Kahn* and the issue of reverse discrimination see generally *Erickson*, *supra* note 28, at 10, 14-18; Ginsburg, *supra* note 30, at 6.

It was also argued that the statute did not discriminate against women employees because social security is not a part of an employee's compensation as were the benefits in *Frontiero*, but rather a social welfare measure designed to benefit the recipient in accordance with that person's need. 420 U.S. at 646. The argument failed because although the right to social security benefits is non-contractual, it "is directly related to years worked and amount earned by a covered employee, and not to the need of the beneficiaries directly." 420 U.S. at 647 (emphasis in original).

35. 97 S. Ct. 1021, 51 L. Ed. 2d 270 (1977).

36. See note 31 *supra*. The case was weaker than *Wiesenfeld*, however, because there was no child involved. See note 34 *supra*. See also *Erickson*, note 28 *supra*, at 36, 43. The dissent believed this distinguished *Wiesenfeld*. 97 S. Ct. at 1044, 51 L. Ed. 2d at 297. Additionally, in *Wiesenfeld* there was an absolute exclusion of males, as opposed to the dependency test here. *Id.* at 1038, 57 L. Ed. 2d at 290.

37. See note 19 *supra*. Five Justices distinguished *Frontiero*, however, because the benefits were not a form of compensation for work done. 97 S. Ct. at 1032 n.1, 51 L. Ed. 2d at 283 n.1 (Stevens, J., concurring); *id.* at 1044, 51 L. Ed. 2d at 298 (Rehnquist, J., dissenting).

38. Mr. Justice Marshall, Mr. Justice Powell, and Mr. Justice White.

protection question indistinguishable from *Wiesenfeld*³⁹ and held that *Wiesenfeld* and *Frontiero* plainly required affirmance of the judgment of the district court.⁴⁰ As the Court had reasoned in *Wiesenfeld*, the plurality determined the authority of *Kahn* to be inapplicable by finding the relevant discrimination to be against the covered wage-earning female, rather than against the surviving widower.⁴¹ The *Kahn* ameliorative policy argument was that Congress may reasonably have presumed that nondependent widows, who receive benefits, are needier than nondependent widowers, who do not receive benefits, because of job discrimination against women.⁴² This argument was rejected because, on the face of the statute, dependency on the covered wage earner, not need, was found to be the central factor in determining beneficiary categories.⁴³ Moreover, in the legislative history of § 402(f)(1)(D) there was no indication that Congress gave any attention to the specific case of nondependent widows and found that they were in need of benefits despite their lack of dependency, in order to compensate them for disadvantages caused by sex discrimination.⁴⁴

The plurality thus concluded "the differential treatment of nondependent widows and widowers results not . . . from a deliberate Congressional intention to remedy the arguably greater needs of the former, but rather from an intention to aid the dependent spouses of deceased wage earners, coupled with a presumption that wives are usually dependent."⁴⁵ This was held to be precisely the situation faced in *Frontiero* and *Wiesenfeld*.⁴⁶

Although recognizing that congressional decisions regarding non-contractual benefits were entitled to deference,⁴⁷ the plurality refused to immunize social welfare legislation from equal protection scrutiny and held that "to withstand constitutional challenge . . . classifications by gender must serve important governmental objectives and must be substantially related to the achievement of those objectives."⁴⁸ The plurality refused to accept as justification for the gender-based discrimination an unverified assumption that it would save the Government time, money, and effort simply to pay benefits to all widows, rather than to require proof of dependency of both sexes.⁴⁹

Mr. Justice Rehnquist, joined by three Justices in dissent,⁵⁰ believed two principles rendered the decision incorrect.⁵¹ First, the special characteristics of the field of social insurance required the Court to give the classification

39. 97 S. Ct. at 1025, 51 L. Ed. 2d at 275.

40. *Id.*

41. *Id.* at 1027, 51 L. Ed. 2d at 277; see note 32 *supra* and accompanying text.

42. 97 S. Ct. at 1029, 1036, 51 L. Ed. 2d at 280, 288; see note 30 *supra* and accompanying text.

43. 97 S. Ct. at 1030, 51 L. Ed. 2d at 280.

44. *Id.* at 1030-32, 51 L. Ed. 2d at 280-83. The same type of analysis was used as in *Wiesenfeld*. See note 34 *supra* and accompanying text.

45. 97 S. Ct. at 1032, 51 L. Ed. 2d at 283.

46. *Id.*

47. *Id.* at 1028, 51 L. Ed. 2d at 279; see notes 34, 37 *supra*.

48. 97 S. Ct. at 1029, 51 L. Ed. 2d at 279 (quoting *Craig v. Boren*, 97 S. Ct. 451, 457, 50 L. Ed. 2d 397, 407 (1976)).

49. *Id.* at 1032, 51 L. Ed. 2d at 283.

50. Mr. Chief Justice Burger, Mr. Justice Blackmun, and Mr. Justice Stewart.

51. 97 S. Ct. at 1036, 51 L. Ed. 2d at 288.

special consideration.⁵² He emphasized that piecemeal development of the statutory scheme comprising the field of social insurance precluded mathematical precision in the distribution of benefits.⁵³ Moreover, because of congressional concern for certainty in the determination of entitlement and for promptness in payment of benefits, administrative convenience was especially important.⁵⁴

Additionally, by characterizing the classification as one favoring widows, the dissent relied on the authority of *Kahn*.⁵⁵ The dissent believed the statutory treatment of widows and widowers reflected legislative judgments that persons qualifying for spousal benefits are likely to have more substantial needs after the passing of a spouse; and that widows are much more likely to be without adequate means of support than widowers.⁵⁶ Thus, the classification was held to be over-inclusive and not exclusionary.⁵⁷ Such a defect was believed reasonably justified on the basis of available empirical data,⁵⁸ the relative importance of administrative convenience,⁵⁹ and the ameliorative purpose of the legislation.⁶⁰

Mr. Justice Stevens, concurring, agreed with the dissent that the relevant discrimination was against the surviving male spouses, rather than the deceased female wage earners.⁶¹ He believed, however, that the ameliorative purpose rationale set forth in *Kahn* was the type of hypothetical justification which was later rejected in *Wiesenfeld*.⁶² He then concluded that the dissent's administrative convenience rationale and ameliorative policy argument were but hypothetical justifications and thereby insufficient to withstand equal protection scrutiny.⁶³

III. CONCLUSION

Since *Reed* the Burger Court has struggled to find a level of equal protection scrutiny for gender-based discrimination. In *Califano v. Goldfarb* the Court avoided an ameliorative purpose argument as justification for a gender-based classification by finding the relevant discrimination to be against a wage-earning female. The Court further required that any such ameliorative purpose be articulated and discernible from the statutory scheme and legislative history. A heightened level of scrutiny was then used, and the statutory classification rejected. Although reaching the proper conclusion, by failing to overrule *Kahn* the Court must continue the awkward task of

52. *Id.*; see notes 34, 37 *supra*. The dissent particularly relied on *Mathews v. Lucas*, 427 U.S. 495 (1976), and *Weinberger v. Salfi*, 422 U.S. 749 (1975), in which the Court refused to extend into the field of social security law constitutional proscriptions against distinctions based on illegitimacy and irrebuttable presumptions. 97 S. Ct. at 1038, 51 L. Ed. 2d at 290-91.

53. 97 S. Ct. at 1038-39, 51 L. Ed. 2d at 291.

54. *Id.* at 1036, 51 L. Ed. 2d at 288; see text accompanying note 49 *supra*.

55. 97 S. Ct. at 1036, 51 L. Ed. 2d at 288; see note 30 *supra* and accompanying text.

56. 97 S. Ct. at 1040-41, 51 L. Ed. 2d at 293-94.

57. *Id.* at 1044, 51 L. Ed. 2d at 298.

58. *Id.* at 1045, 51 L. Ed. 2d at 298.

59. *Id.*

60. *Id.*, 51 L. Ed. 2d at 298-99.

61. *Id.* at 1032, 51 L. Ed. 2d at 283.

62. *Id.* at 1035-36, 51 L. Ed. 2d at 287.

63. *Id.* at 1033-35, 51 L. Ed. 2d at 284-87.