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Supreme Court of the United States

OCTOBER TERM, 1969

Office-Supreme Court, U.S.
FILED

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JOHN F. DAVIS, CLERK

In the Matter of:

THE FIRST NATIONAL BANK IN PLANT CITY,
Plant City, Florida

Petitioner,

vs.

FRED O. DICKINSON, JR., et al.

Respondent.

Docket No. 19

WILLIAM B. CAMP, COMPTROLLER OF THE
CURRENCY

Petitioner,

vs.

FRED O. DICKINSON, JR., et al.

Respondent.

Docket No. 34

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Place Washington, D. C.

Date October 16, 1969

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TABLE OF CONTENTS

	<u>ARGUMENTS OF:</u>	<u>P A G E</u>
1		
2	James van R. Springer, on behalf of Petitioner Camp	3
3		
4	Robert S. Edwards, on behalf of the Petitioner The First National Bank in Plant City	23
5	William Reece Smith, Jr., on behalf of Respondents	36
6	James F. Bell, on behalf of Amicus Curiae	60
7		
8		
9		
10		
11	* * * * *	
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1969

3 ----- x
4 THE FIRST NATIONAL BANK IN PLANT CITY, :
Plant City, Florida, :

5 Petitioner :

6 vs. :

No. 19

7 FRED O. DICKINSON, JR., et al., :

8 Respondent. :

9 ----- x
10 WILLIAM B. CAMP, COMPTROLLER OF THE :
11 CURRENCY, :

12 Petitioner :

13 vs. :

No. 34

14 FRED O. DICKINSON, JR., et al., :

15 Respondent. :

16 ----- x
17 Washington, D. C.

October 16, 1969

18 The above-entitled matter came on for argument at

19 10:10 a.m.

20 BEFORE:

- 21 WARREN E. BURGER, Chief Justice
- 22 HUGO L. BLACK, Associate Justice
- 23 WILLIAM O. DOUGLAS, Associate Justice
- 24 JOHN M. HARLAN, Associate Justice
- 25 WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice

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1 noted in its opinion that there is litigation pending in a
2 Florida State Court where this issue has been raised for the
3 first time that will resolve, presumably as a matter of state
4 interpretation, whether or not this kind of service is, in fact,
5 prohibited by the statutes.

6 However, subject to the outcome of that litigation,
7 the Florida Court has stayed until this Court decides this case
8 the Court of Appeals accepted the interpretation of the Florida
9 State Banking Commissioner, who is one of the respondents here,
10 that the Florida statute would prohibit this kind of service
11 subject only to a retention of jurisdiction by the District
12 Court to change its order ---

13 Q Did you say this is not prohibited by Florida
14 statutes, and the issue has herewith repeated?

15 A Yes, yes, that is correct, Mr. Justice. I was
16 just putting the cart before the horse.

17 It seemed a little strange to me that the Florida
18 Court would stay itself, pending determination of this case, but
19 it in fact has done so. In any event, nobody knows what will
20 happen to that litigation, and unless something does happen, the
21 Court of Appeals has, in effect, decided that this service cannot
22 proceed.

23 The issue therefore in this case is whether the kind
24 of messenger service sought here is a branch, that being, of
25 course, a term of origin of the National Bank Act. If it is a

1 branch, then 36(c) of the National Bank Act makes its legality
2 depend upon state law and, as I have said, state law for present
3 purposes forbids it. If it is not a branch, then its legality
4 depends only upon the provisions of the National Bank Act relat-
5 ing to the powers of national banks, which do not refer to
6 state law and are not in issue in this case.

7 As we see it, the definitional problem this case
8 presents really breaks down into two questions. The first ques-
9 tion is the threshold question of where we look for the criteria
10 to determine what is a branch. We say that naturally one would
11 look to subsection (f) of the branching section of the National
12 Bank Act Section 36, which says that the term "branch," as used
13 in this section, shall be held to include any branch bank, branch
14 office, branch agency, additional office or any place of business
15 at which deposits are received or checks paid or money lent.

16 The Court of Appeals says, however, that Section 36(f)
17 is hardly adequate as a definition. Those are the words used.
18 Therefore, Florida should determine whether it is a branch for
19 purposes of incorporation of state law, which is provided for in
20 Section 36(c).

21 As I have indicated, if the Court of Appeals was right,
22 that ends the case. Here if we are right, there remains the
23 further question whether the District Court properly held that
24 the armored car messenger service in question here was not
25 branch banking as a matter of purely Federal law under the

1 Section 36 definition which the District Court treated as its
2 exclusive definition. And, of course, if the District Court
3 was right, then Florida has nothing to do with the case.

4 There are two petitioners here, the Comptroller of
5 the Currency, who has authorized the service in question, and
6 the First National Bank of Plant City, Florida, which was con-
7 ducting the service. There will be argument on behalf of each
8 petitioner. I plan to cover the first of the questions that I
9 mentioned, the choice of law question which has importance not
10 only for this particular kind of service, but for a variety of
11 other services that national banks offer or may wish to offer.

12 Mr. Edwards, who will be arguing on behalf of the
13 bank, will deal primarily with the second question, which assumes
14 that of course that we prevail in the first question, the ques-
15 tion as to how the facts of this particular service relate to
16 the Federal definition in Section 36(f) if that is, in fact, the
17 governing definition.

18 That question, of course, also has great importance
19 because there are a great number of national banks throughout
20 the country that provide services or are interested in providing
21 services of the general nature of the services that are involved
22 by Plant City.

23 Because of this division, I would hope to limit my
24 statement to a very brief statement of how the case arose and
25 the fundamental facts, leaving for Mr. Edwards a more detailed

1 description of the messenger service that is involved in the
2 case.

3 Q Will you keep your voice up a little please?

4 A I am sorry.

5 In October 1966 consultation with the Comptroller of
6 the Currency, the Plant City National Bank began to operate its
7 messenger service. It was designed for the benefit of customers,
8 primarily stores, in the outlying areas of Plant City, Florida,
9 which is a city of about 18,000 people some 20 miles inland
10 from Tampa.

11 The messenger service has two elements: First, an
12 armored car which pursues a daily route between the bank's
13 office and the customers' places of business. A messenger rides
14 on that truck and he receives from the customers sealed bags
15 containing funds for deposit in the bank, which he then delivers
16 to the teller at the bank's office, who opens the bags and then
17 treats the contents as deposits when they are received at the
18 bank. The messenger also delivers to the customers upon prior
19 order by the customers sealed bags that contain change or funds
20 for use in their businesses, which have been withdrawn from the
21 customers' accounts before the truck leaves the bank.

22 The second element of the messenger service is a secured
23 receptacle, which is literally a hole in the wall at a shopping
24 center with a drop-slot where the bags or envelopes containing
25 funds for deposit in the bank can be left for pickup by the

1 messengers during the course of its daily rounds.

2 The armored car operation was designed to comply spe-
3 cifically with paragraph 7490 of the Comptroller's Manual for
4 National Banks, which is a compilation of pertinent regulations,
5 among other things. The paragraph authorizes such an operation
6 subject to the condition that the customer understands the mes-
7 senger is his agent and not the bank's, and that any funds
8 received are not actually deposited until the teller at the bank
9 accepts them.

10 The bank also obtained with respect to the shopping
11 center pickup point a specific ruling from the Comptroller's
12 office that that was permissible subject generally to the same
13 conditions that I mentioned. Underlying both rulings, of course,
14 was the determination by the Comptroller's office that such
15 operation subject to these conditions were sound and safe services
16 authorized by the National Bank as incidence to the conduct of
17 a banking business, and that they did not amount to the opera-
18 tion of a branch as to which, of course, state laws would be
19 pertinent.

20 Just as the messenger service was about to begin its
21 operation the respondent Dickinson, who is the Florida State
22 Banking Commissioner, sent a letter to the president of the bank
23 expressing the view that the services would violate Florida law
24 and threatening suit if the bank did not cease and desist.

25 The bank promptly began this suit in the District

1 Court seeking declaratory judgment and an injunction to prevent
2 state interference with the operation. The Comptroller of the
3 Currency subsequently intervened as a plaintiff and the respondent
4 state bank her also intervened as defendants on the side of the
5 State Commissioner.

6 At the outset of the litigation the District Court
7 entered a preliminary injunction allowing the messenger service
8 to continue and, in fact, that preliminary injunction has con-
9 tinued until now, so that the service has been proceeding. Then
10 after exploration of the facts and affidavits and on reading
11 voluminous depositions that were taken in the case, the District
12 Court entered summary judgment in behalf of the National Bank
13 and the Comptroller.

14 Q Would you mind stating precisely the nature of
15 the business at the alleged so-called branch bank -- the messen-
16 ger bank?

17 A As I indicated, Mr. Justice, I had hoped perhaps
18 that Mr. Edwards in his portion of the argument would describe
19 that more fully.

20 Q I would know more about the case if you would do
21 that.

22 A Well, as I indicated ---

23 Q But then if it bothers you, you wait.

24 A It does not bother me, Mr. Justice Black. I did
25 try to outline the general language it operates under.

1 Q I didn't get ---

2 A It involves an armored car which picks up from
3 customers, generally business enterprises in the outlying areas
4 of Plant City, sealed canvas bags containing funds which they
5 wish to deposit at the main office of the bank in downtown Plant
6 City. It receives those, turns them over to a teller, actually
7 two officials at the bank at the office, who then open the bag,
8 count the money, treat the money as if it were then deposited
9 at the point when it reaches the bank.

10 Q Do they go and pick it up at the individual
11 stores in the outlying areas?

12 A The messenger on the armored car does do that,
13 yes.

14 Q How far does he go?

15 A Well, a ---

16 Q Does he go to any other villages or towns?

17 A Mr. Edwards may correct me on that, but I believe
18 not. I believe it is unincorporated, more or less rural areas
19 that surround the shopping center.

20 Q But these are employees of the bank, are they not?

21 A Yes, they are.

22 Q And the truck is owned by the bank?

23 A Yes, it is.

24 Q They are controlled by the bank?

25 A Yes, in the sense that ---

1 Q Their routing would be, their daily activities
2 are directed by the bank as a principal?

3 A Yes, that is right, Mr. Chief Justice, though
4 of course there are contractual relationships, a specific con-
5 tract with each customer upon whom the truck calls, this con-
6 tract in which the customer states he understands the fact the
7 messenger is his agent and not the bank's and that money is not
8 treated as a deposit until it is actually received, which of
9 course has substantial practical significance.

10 If the truck were robbed, the money would still be the
11 customer's money and not the bank's money.

12 Q But it is insured?

13 A There is insurance, but it would not be deposited
14 until the customer, for example in the case of a robbery,
15 obtained recovery from the insurance company and then gave that
16 money to the bank.

17 Q Who provides the insurance?

18 A The bank pays the insurance.

19 Q Does the depositer pay anything for this service?

20 A No, he does not, Mr. Marshall. I understand --
21 though it is strictly not part of the record -- it is contem-
22 plated that when the service shakes down, and I don't know
23 exactly when that would be, that some allocation of cost could
24 be made. Perhaps a charge would be made. But it is true that
25 there is now now charge to the customers.

1 As I indicated, the District Court agreed with what
2 is in substance our position here, that the determination of
3 whether or not this service amounts to a branch is one of
4 purely Federal law in the application of the definition as set
5 forth in the National Bank Act. It further determined that this
6 service did not amount to a branch, that the Comptroller had
7 properly shown. And, accordingly, this was allowed.

8 The Circuit reversed taking the approach that the
9 question whether or not this was a branch, therefore whether
10 Florida law would be incorporated and therefore whether Florida
11 law would be allowed to prohibit this service was a question of
12 state law, and that since Florida law, as the Court understood
13 it, regarded this activity as a branch, therefore Section 36 ---

14 Q What was the source of that Florida law?

15 A The source of that Florida law as to what was a
16 branch was ultimately the Court of Appeals notion of the meaning
17 of the Florida statutes, which in fact says nothing about branch-
18 ing or about branches in terms. It simply says any bank and
19 trust company shall only have one place of doing business and
20 the business of the bank or trust company shall be at its banking
21 house and not elsewhere.

22 Q There are no Florida decisions which would sup-
23 port the Court of Appeals interpretation of that?

24 A That is true.

25 Q Is that the issue now before the Florida --

1 A As I am saying, that is an issue which is now
2 in a court in Florida, which may of course work its way up through
3 the system.

4 The Court of Appeals did, as I indicated, note the
5 view of the Florida Banking Commissioner and, to be frank,
6 indicates that it thought that was a reasonable position, so it
7 was not and out and out relying simply upon the ruling of a
8 Florida official.

9 The Fifth Circuit's decision leaves what seems to us
10 an anomalous principle, one which is apparently stated in this
11 Court by respondents, but which is enthusiastically supported
12 by the amicus brief which has been filed in behalf of The
13 National Association of Supervisors of State Banks, who I under-
14 stand will be presently an argument and who represent all 50 of
15 the state's banking commissioners, including the one who is a
16 respondent here.

17 We believe that the principle followed by the Court of
18 Appeals is erroneous, but it is one that would be highly damag-
19 ing to the proper regulation of the National Bank Systems. We
20 think that a straightforward reading, to begin with, of Section
21 36 of the National Bank Act makes it quite clear that Section 36
22 is designed to establish a uniform and exclusive definition of
23 what is a national bank branch.

24 The structure of Section 36 remains now very much as
25 it was when it was enacted in 1927 as Section 7 of the McFadden

1 Act for the first time allowed national banks to engage in branch
2 banking, generally speaking, on the same terms as state banks.

3 The introductory paragraph of Section 36 provides the
4 conditions upon which the National Banking Association may retain,
5 establish and operate a branch or branches are the following:

6 The word "branch" appears throughout the section,
7 notably in subsection (c) to which I have referred, which says
8 that a national banking association may, with the approval of
9 the Comptroller of the Currency, establish and operate new
10 branches if such establishment and operation are at the time
11 expressly authorized to state banks by the state laws in question.

12 There are further refinements there.

13 Q Mr. Springer, do you read the Court of Appeals
14 opinion as saying whether this is a branch under Federal law is
15 wholly irrelevant as a consideration?

16 A I acknowledge that there is a certain amount of
17 not entirely clear language in the opinion. I think that the
18 ultimate -- that the Court's statement of what it was holding
19 and it is holding in fact can only be read as holding that if
20 state law regards it as a branch, it is therefore a branch for
21 purposes of Federal law and, therefore, substantive law of
22 branching is incorporated by Section 36(c).

23 Q Irrespective of whether we are looking at it
24 simply in the four corners of the Federal law, it is a branch
25 of not?

1 A In fact, the Court of Appeals says that the
2 Federal law is hardly adequate as a definite and, as we read it,
3 I see no -- and as the State Supervisors read it, that in substance
4 does amount to saying that if state law calls it a branch, you
5 don't have to look at a Federal law.

6 That seems to us a highly anomalous reading of a sub-
7 section of a Federal statute which says that the term "branch"
8 as used in this section shall be held to include any branch bank,
9 office or agency at which deposits are received, checks paid,
10 or loans or money lent.

11 Congressman McFadden, who was the sponsor of the Act,
12 in his own analysis of the Act upon its passage, said that
13 subsection (f) -- and I am quoting his language -- "defines the
14 term 'branch'." "Anyplace outside of the main office where the
15 bank carries on its business, receiving deposits, paying checks,
16 lending money or transacting business at the main office is a
17 branch."

18 Of course, this question of what is a branch is rele-
19 vant for a variety of purposes other than than subsection (c)
20 to which we refer in our brief, including sections where there
21 is no semblance of any incorporation of state law. It seems
22 unusual that Congress would expect that the definition of "branch"
23 for these purposes would vary according to the state where the
24 particular national bank in question is located, and it seems
25 even more anomalous to treat the word "branch" as having different

1 meanings in different subsections of the same section enacted
2 at the same time.

3 As we further detail in our brief, the Comptroller,
4 the Attorney General and, in this case, the Federal Courts have
5 all treated the question of whether or not a particular enter-
6 prise is a branch as a question of Federal law unaffected by
7 local law. This is consistent with the general principle that
8 when Congress uses a word, unless there is some reason to believe
9 otherwise, Congress intended that that word should be defined
10 and interpreted as a matter of Federal law.

11 A Is it true that the state bank could not operate
12 this service?

13 A Subject to what I said before, that is true;
14 subject to a possible decision to the contrary by the Florida
15 Courts where the question -- for present purposes it is true.

16 Q But as the law now stands, it is law that the
17 state bank could give its depositors this additional free service?

18 A Yes, Mr. Justice, that is correct..

19 Q But a national bank can't?

20 A Yes. We say ---

21 Q Isn't that contrary to the purpose of the Act?

22 A It is argued, of course, that is contrary to a
23 supposed principle of competitive equality. Of course, that
24 principle was articulated and followed by this Court in the
25 Walker Bank Case. As to that, of course the Walker Bank Case

1 involved a situation where nobody questioned what was involved
2 was a branch and that there was an incorporation of state law.
3 The question there is, is all of the state law incorporated, as
4 the Court put it, or only some of it?

5 The Comptroller made a valiant uphill argument that
6 it was only the law relating to the location that was incor-
7 porated and not the law relating to the manner in which a branch
8 can be established.

9 This case, on the other hand, raises the question whether
10 there is any incorporation of state law at all. There is such
11 an incorporation only if there is a branch. We would submit
12 that the policy of competitive equality comes into play only
13 to the extent there is in the Act an incorporation of state
14 law. It is not an all-pervading, absolute policy that runs
15 throughout every provision of the National Bank Act and, of
16 course, there are a great many things national banks can do that
17 state banks cannot do and there are a great many things that
18 state banks can do that national banks cannot do.

19 So that we say that while competitive equality is a
20 great genuine principle, it is a principle that applies only in
21 the instances where Congress has specifically provided for a
22 reference to state law.

23 Q Of course, you could win on the question of the
24 governing law and lose on whether this is a branch or not?

25 A Yes, that is certainly true, Mr. Justice White,

1 and I am relying on my colleague primarily to convince you of
2 that as a matter of Federal definition, this pickup and delivery
3 service does not amount to the conduct of a branch and more par-
4 ticularly, in the words of the statute, does not amount to the
5 receipt of deposits of the payment of checks.

6 The effect of the Court of Appeals notion of the all-
7 pervading applicability of the principle of competitive equality
8 is to delegate to the states broad control over perhaps any
9 off-premise activity by national banks. All the state has to do
10 is to call it a branch, and by calling it a branch the state
11 can succeed in having its own substantive law which may permit
12 it or may prohibit it, incorporated purportedly through subsection
13 (c) of Section 36.

14 Q Well, if the state did that, I suppose the Court
15 might be interested in whether the state may be doing something
16 of the same general character and not calling it a "branch,"
17 would they?

18 A Oh, it would certainly be determined, the State
19 Comptrollers would say, "Why should anybody be worried?" The
20 State Comptrollers can prohibit an act by a national bank only
21 if they are also willing to prohibit it by a state bank.

22 Q As you indicated, I think earlier, the state does
23 not permit this activity for a state bank?

24 A Yes. Of course, the effect of this is, first,
25 to move from the Federal Comptroller to the state officials, or

1 at least to the State Legislature a broad range of control over
2 the incidental services that a national bank can perform off its
3 premises. This involves not only armored car services of this
4 type, but a broad range of activities related to the lending of
5 money, which is another issue of current importance.

6 Potentially it involves things like credit cards, for
7 example, which I suppose the State Comptroller could regard as
8 a banking activity being carried on off the bank's premises, and
9 if the State Comptroller chose to prohibit it, he could prohibit
10 it. And under the Fifth Circuit theory it appears that that
11 would mean in that particular state a national bank cannot carry
12 on that kind of activity.

13 Q Does the messenger lend any?

14 A No, I believe there is no issue in this case,
15 Mr. Justice Black, of lending. I am just saying -- of course,
16 the principle of allowing the states in this extent would permit
17 this.

18 Q Does it govern its lending activities. That is
19 the reason I asked the question.

20 A No, on the facts of this case there is no question
21 of lending.

22 Q Is all they do to accept deposits?

23 A Well, in a technical sense at least they do. They
24 accept money for deposits. The deposit is taking place.

25 Q Is that all they do?

1 A And they also deliver funds which are drawn from
2 a customer's account to the customer's store. He can call in and
3 say, "Will you please take ---

4 Q Do they cash checks?

5 A No, they do not.

6 Q And there is no charge, no extra charge of any
7 kind?

8 A No, sir, there is no charge to the customer other
9 than the charges of having the account at the bank and, of course,
10 there is a factor that generally the people who use this are
11 relatively large customers from whom the bank presumably receives
12 relatively large business.

13 Q I suppose that this is getting under the phase
14 that your colleague in his argument is going to handle.

15 A Of course, I am happy to answer. Sir, as I have
16 indicated, we think that this does have broad significance, some
17 of which has been indicated by some detail by the Bank of Cor-
18 nelia and a group of other national banks throughout the country
19 as amicus curiae in this case.

20 In sum, we think this choice of law issue the District
21 Court gave Section 36 a simple, strictforward and sensible read-
22 ing. The Act provides, according to that reading, which seems
23 not only sensible, but the least complicated approach, which has
24 some virtue, that national banks can have branches where state
25 banks can have branches; but as befits a comprehensive scheme

1 of Federal regulation, the Act specifies the uniform nationwide
2 set of criteria for determining what is a branch and, therefore,
3 when we look to state law.

4 I might just say a word of introduction to Mr. Edwards
5 points that, of course, the Comptroller in promulgating the
6 rulings pursuant to which these activities are being carried on
7 made a determination that these pickup and delivery services do
8 not amount to branch banking. The Reserve Board for its own
9 purposes, which involves involve its regulation of the banks
10 that are members of the Federal Reserve System which are governed
11 by the same law, the same Federal law with respect to banking,
12 has actually the same determination.

13 We believe that those interpretations are, first, the
14 only reasonable ones that can be given of the Federal statutes,
15 that is something we are treating the question as a matter of
16 Federal law. In any event, we believe that expert interpretations
17 of the law that they are directed to administer by these two
18 Federal agencies is entitled to a certain amount of deference;
19 if there is an area of reasonableness, that determination should
20 be set aside only if found to be unreasonable. Therefore, we
21 believe, first, that the question is before this Court is one of
22 Federal law and that the Federal law was properly interpreted
23 with respect to this situation.

24 Q What is the language that you rely on in that
25 Court of Appeals opinion that excludes any necessity for examining

1 the arrangement here in terms of Federal law?

2 A Of course, we set forth some of that in our reply
3 brief at page 3. First of all, the Court starts off early in
4 its opinion by saying the controlling issue of law in this appeal
5 concerns the District Court's choice of law. That is, that
6 Court's failure to upset state law in determining whether First
7 National's activity constitutes branch banking.

8 Then it goes on to say, "First National attempted to
9 convince us that Section 36(f) is the sole and monolithic definer
10 of 'branch'. Then by taking us through some labyrinthian and
11 meandering paths of the law of agency and contracts, First
12 National seeks to demonstrate that it is not an office of agency
13 where it is specified in Section 36(f), deposits are received
14 or checks paid or money lent.

15 "Such a line of argument," the Court of Appeals said,
16 "is indefensible." And finally it said toward the end of its
17 opinion, "We therefore refuse to tread the twisting paths of
18 agency and contracts, urged upon us in this case, and look instead
19 to the laws of Florida."

20 I think, as I have said, considering that kind of
21 language plus the result, we have to say that in effect the Court
22 of Appeals has said that the language of 36(f) is superfluous.
23 It is there, but it really doesn't have any meaning because if
24 the state calls it a branch, then it is a branch.

25 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Springer.

1 Mr. Edwards?

2 ARGUMENT OF ROBERT S. EDWARDS

3 ON BEHALF OF PETITIONER, THE FIRST NATIONAL BANK IN

4 PLANT CITY

5 MR. EDWARDS: Mr. Chief Justice, may it please the
6 Court:

7 I would like to begin, if I might, by addressing myself
8 just generally to how we got into this situation. I represent
9 the First National Bank in Plant City, who filed a suit for
10 declaratory relief in the Federal Dist Court in the Northern
11 District of Florida. Mr. Dickinson resides at Tallahassee.

12 We were faced with the situation of where we had gone
13 to the Comptroller of the Currency, who is our supervisor and
14 our boss, as it were, and had cleared with him and having analyzed
15 his regulations and rulings that we could carry on this transaction
16 that we do now carry on.

17 We had prepared and begun to render this service when
18 we received a letter directed to us by the Assistant Deputy
19 Banking Commissioner of the State of Florida, simply telling us
20 to cease and desist, that our activities constituted branch bank-
21 ing under Section 65906 under the Florida law. It indicated that
22 if we did not elect to cease and desist, that they would take
23 action as they had just recently filed against the Bank of Panama
24 City to require us to terminate this type of service that we were
25 rendering.

1 It was much later, as a matter of fact, after a favor-
2 able decision by the Federal District Court and the appeal was
3 well on to the Circuit of Appeals when the State Court was first
4 involved in this litigation by a bank in Tallahassee. The state
5 litigation arose much later in time and there was no state liti-
6 gation available, any state decisions that would guide anybody
7 at the time the Court made its decision in this.

8 I might, as a matter of passing, point out to you
9 that much later, even after the Circuit Court of Appeals had
10 entered its decision, there was a case of the Bergamon Financial
11 Corporation against Dickinson decided by the Supreme Court of
12 Florida, wherein the Supreme Court of Florida declined to deter-
13 mine that chapter 659 made the activities of a broker who was
14 soliciting and accepting deposits for transmittal to a savings
15 and loan association in the State of California as a banking
16 activity.

17 The Supreme Court at that instance said, "The receipt
18 of these monies by this broker to transmit to California did not
19 constitute the acceptance of a deposit which would violate
20 chapter 659 of the banking law and, in essence make that broker
21 a banker." So that decision by the Supreme Court is available
22 to us in the State of Florida.

23 There were no other decisions and there are no other
24 decisions. The subject court, which is the court of original
25 jurisdiction in Florida, elected to simply await the outcome of

1 this case since the activities had been begun on the basis of
2 the District Court's opinion or decision that it was lawful.

3 I need to speak to you also to the fact that we have
4 been characterized as carrying on a subterfuge in our activities
5 in Plant City. And I need to say to you that Plant City is a
6 small community located 20 miles from Tampa, 11 miles from Lake-
7 land and we are a fairly small community between two larger com-
8 munities and we are a large developing area. We serve a much
9 larger community than 18,000 people.

10 We had a real need shown to us by several of our cus-
11 tomers ---

12 Q What is the population of Plant City?

13 A Within the corporate limits our Chamber of Com-
14 merce claims 18,000 people. We hasten always --

15 Q Are there any other banks there?

16 A There is one other bank, a state-chartered bank
17 that has been in existence since 1905. It is the Hillsboro Bank
18 and one of the intervenors here. There are two other intervenors,
19 which are the Peoples Bank of Lakeland, which is 11 miles away
20 in the City of Lakeland, and the First State Bank of Ruskin,
21 which is approximately 25 miles south of us. These three state
22 banks are intervenors in this Court.

23 Q Intervenors and what deposition?

24 A They are on the side of the State Banking Commis-
25 sioner. They have actively carried on the litigation on behalf

1 of the Banking Commissioner of Florida, resisting the decision
2 of the Federal District Court and sustaining or promoting the
3 decision of the Circuit Court of Appeals.

4 The Hillsboro Bank has long been in existence, the
5 state bank in the City of Plant City. We became a chartered
6 bank in 1957 and as such was the baby bank, the one that needed
7 to get out and to do thing in order to get deposits and in order
8 to be able to render a service to the community and thereby
9 grow.

10 We are the smaller bank of the two banks in the com-
11 munity. We found ourselves in 1966 and actually in 1965 with
12 a situation where our city, which had been long a very small
13 city, was beginning to develop and the first shopping center was
14 coming in. It was located approximately a mile from town.

15 We researched under the Federal rulings that were
16 available this idea of how we could render a service to this
17 shopping center approximately a mile from town. We determined
18 that the locating of a drop very similar and, as a matter of
19 fact, identical to the night depository of the bank in that
20 shopping center would render a very great service to this area,
21 because we had these many stores that were confronted with the
22 problem of getting at the closing hour from that place to our
23 banking premises, hopefully, and possibly to the other banking
24 premises to deposit the collections of the day, carrying with it
25 all the attendant problems that goes with transporting money

1 after dark and so forth.

2 When we were able to determine that the Comptroller of
3 the Currency thought that if we complied with these rulings,
4 that this drop would not go to and become within the definition
5 of a branch bank, we began this service. And incidentally this
6 service is now being rendered by several other banks in the
7 State of Florida.

8 This service is simply a place for people to bring
9 their night bags, drop them into the night depository so that
10 they will be picked up by our armored car messenger service and
11 admitted to the bank either that evening or the next morning,
12 thereby eliminating the problem that is very difficult for them.

13 Now we also elected at the same time because the
14 Comptroller indicated that it could be done to sign contracts
15 with various other business people in the area, which said that
16 we would agree to transmit their funds to the bank for deposit
17 as agent with the clear understanding on the basis of the con-
18 tract that was signed that their deposits would become deposits
19 when they reached the bank's teller and thereby we felt that we
20 had adequately met the test that the Federal definition set up.

21 When we examined Section 36(f), it was very clear to
22 say that branch banking would be considered and we would become
23 under the Florida regulations when we established a branch place
24 of business or another business office at which we elected to
25 accept deposits of paychecks or lend money. We were very careful

1 not because of any subterfuge, but simply because we wanted to
2 stay within the rules and render the service that was needed, to
3 have an understanding with our people as to what we were doing.

4 And I will submit to you that on the basis of that we
5 have a clear understanding with these people and that we cannot
6 go beyond that and will not go beyond that, and that this is a
7 very definite and clear place where you can draw the line, and
8 that this is what Congress intended to do.

9 Q I would like to ask you a little more about the
10 factual setup, which I believe Mr. Justice Black was addressing
11 himself to a while ago. They carry money both ways, do they?

12 A Yes, we do.

13 Q Suppose a customer, who is a contractor, calls
14 the bank and says that he wanted \$10,000 in small bills delivered
15 in a certain way and delivered to the job site where the con-
16 tractor was performing work in order to pay off his employees.
17 Would the First National carry out that instruction?

18 A If he has on deposit in the First National Bank
19 \$10,000 and has previously signed this contractual arrangement
20 with us whereby we have agreed to charge his account, then we
21 will charge his account, place this money in a sealed container,
22 outlining the monies that are in there, carry it to the person who
23 has requested it, obtain a receipt from him whereby he acknow-
24 ledges that we have charged his account at the bank and deliver
25 those monies to him, yes.

1 Q Would they put it in envelopes with names on it,
2 specifying amounts for each person, so that these envelopes
3 could be handed out to the employees on the job site?

4 A We do that quite frequently for people who come
5 to our drivein window. If they ask that a payroll be made up,
6 yes, we do that and place it within the bag and it can be picked
7 up at our drivein window at the bank.

8 Now I say that because I don't believe that we have
9 been asked to do that in our service if we have not been called
10 on. The answer is that probably we would.

11 Q How far, what would be the range of the territory
12 that you would make that delivery to the job site for the con-
13 tractor?

14 A Well, there is no rule on it. The practical
15 economics of the situation would govern. Our truck does go out
16 as far as 20 miles in one or two instances and in some other
17 instances, in all honesty, the trucks range much further than
18 that. There is no rule within the Federal System that says we
19 can go only so far.

20 Q But a state bank could not, or could it afford
21 that service?

22 A Under the present circumstances in Florida it
23 could not, because it has been held by Comptroller Dickinson
24 to be a matter of branch banking and they would not allow that.

25 I think that would bring us well to this problem of

1 competitive equality, which has been the overriding problem in
2 this situation all along.

3 And I would like to call to this Court's attention ---

4 Q Do you have any villages outside of Plant City?

5 A Yes, some very small villages.

6 Q What size?

7 A One store or two stores, a filling station and
8 a store.

9 Q Do you have a bank in any of those other places?

10 A No, sir, there is not. However, I would want to
11 say to the Court that we have not set our rules to prohibit us
12 to go to another bank's community. We simply feel that we could
13 legitimately do that as that bank, for instance, the Peoples Bank
14 in Lakeland comes into our community in advertising and in lend-
15 ing money, so that we are constantly competitive with those other
16 banks in the other communities.

17 Q Did you say you have a night depository at some
18 of these places?

19 A We have a night depository -- we have a drop at
20 the shopping center that is the same thing as a night depository.
21 It is the shopping center approximately a mile from our main bank-
22 ing office.

23 Q Is that the only one you have there?

24 A It is the only one we have, yes, sir.

25 Q The other places you just simply move in there

1 and carry the money?

2 A Our truck drives to their door. Our messenger
3 carries it to the business house, which has previously contracted
4 with us for this service.

5 Q And you get the package from them, money which is
6 to be deposited?

7 A That is correct, sir. We pick up sealed bags
8 on which there is listed on the outside slip the money which is
9 contained therein. This transmittal slip also has printed on
10 the back side the contract under which we operate, specifying
11 that it is being transmitted their agent and that it will become
12 a deposit when it has reached the bank, received by a teller
13 and the deposit slip completed.

14 Q Suppose the night deposit out there is broken
15 into. Who is responsible?

16 A Under the contract the funds do not become deposit
17 funds in the First National Bank. However, we obtain from the
18 insurance company which writes our bond and our insurance a spe-
19 cial rider whereby they agreed that they were insuring those
20 funds for the benefit of persons who have placed those funds in
21 that bank depository.

22 Q And what outside of the technicality is the dif-
23 ference between a deposit out there and a deposit in the night
24 depository in town? What is the difference?

25 A There is no difference in depositing it out there

1 and the night depository which is located adjacent to our bank.

2 Q The night depository is admittedly a part of the
3 banking business.

4 A It is a part of the ---

5 Q Why is not the one out at the shopping center
6 "part of the banking business"?

7 A It is a part of the banking business as it were,
8 for term of the bank activities. Perhaps it comes within the
9 ambit of the Florida statutes. I say "perhaps."

10 However, if we go back to the proposition that we must
11 look first to Section 36(f) of the Federal statute to determine
12 what is branch banking and therefore what is controlled by the
13 Federal law, the deposit contract becomes a very key situation.
14 In other words, it is the place where we draw the line. It is
15 the place where we mark the outer limits, as this Court said in
16 the Agricultural Bank concerning the right to tax. It is the
17 line demarcation. We believe it is a very clear line.

18 Q Why do you insure it if it is not your money?

19 A We insure it because it is a service to our cus-
20 tomers and we feel the customers would be at a loss without it.
21 However, we are very careful to have the customer understand and
22 the insurer to understand that there is a contract protecting
23 them. And for that reason, therefore, ---

24 Q There are two contracts protecting them. One is
25 the contract and the other is the insurance policy.

1 A The contract that they have with us is a defini-
2 tive contract as to the type of service that we are rendering
3 them and the contract protecting them is the insurance contract,
4 which is a separate contract, yes, sir.

5 Q You have your own liability for the money. After
6 all, you have you have custody of it, don't you?

7 A Well, we have a possible liability except for the
8 fact that we have a contractual understanding that the money is
9 theirs.

10 Q So one way of satisfying that contingent liability
11 is to insure your customers?

12 A Correct, sir, and that is what we have elected to
13 do.

14 Q If there was a holdup on the way in of this
15 truck, they would not be robbing the First National Bank, would
16 they?

17 A No, sir, under the contract that exists they would
18 not be and we would, of course, look to the insurance company for
19 their reimbursement.

20 Q Suppose in the shopping center you set up a build-
21 ing which you called a bank and said that this is a limited bank.
22 All we do is take in money and pay out money. We do not render
23 any other banking services. Would that be a branch bank?

24 A Yes, sir. I think we would definitely have ---

25 Q What is the difference? You don't have the big

1 building, you just have a hole in the wall where you can leave
2 it.

3 A Well, to begin with, we have no people there.
4 It is simply a hole in the wall where you go and leave it.

5 Q You have messengers there.

6 A I beg your pardon?

7 Q You have messengers.

8 A No, sir, the messenger does not stay there. He
9 simply picks up.

10 Q He goes there and --

11 A Yes, he does. But the point being if we could
12 go back to the night depository, we have a clear understanding
13 by contract established by night depository law that when you
14 drop into the night depository at the bank, you have not made a
15 deposit and we believe that this definition is very important
16 in defining the state versus the national situation, and that it
17 is a breaking point that is the proper breaking point.

18 If we did set up this building that you are talking and
19 render the services, it is clearly within the deposit window
20 situation that is anticipated by Congress. We believe that we
21 are still without that when we have rendered the service on this
22 basis.

23 We would like to point out to the Court that there is
24 a very definite and clear reason for wanting to do this, because
25 it does render a service and constitutes a banking service rather

1 branch banking, which is prescribed by the Federal and state
2 laws.

3 Q How would you characterize this as a branch or
4 not a branch if the catch in your theory of the laws controlling
5 is the functional, rather the contractual activity of the bank
6 -- the functional activity of the bank rather than its con-
7 tractual relationships with the depositors?

8 A Well, to begin with, I believe that when we start
9 dealing with deposit law or contract law and move over into the
10 functional definition rather than the strict contract law which
11 now exists is well developed throughout the United States as
12 is in our brief. We are beginning to deal with a lot of prob-
13 lems, FDIC insurance coverage and many other areas, so that if
14 the Court would choose to say, well, functionally anything that
15 looks like a deposit, smells like a deposit is, I think you have
16 opened the door to liability on the part of banks in night
17 depository situations, FDIC situations and many other situations
18 that would be a very big problem. This is an area that should
19 be looked at very closely, based on the well-developed contract
20 law as it now exists.

21 If I could say one thing, concerning this competitive
22 equality. Competitive equality cannot be a mere image in my
23 judgment. By imposing the competitive equality that the Circuit
24 Court has elected to do, the result of this situation has been
25 that I as a national bank customer must go and ask my supervisor,

1 The Comptroller of the Currency, "May I do this?" And when he
2 says yes, I can, I know I must go direct to the State Supervisor,
3 "May I do this? In your judgment is it branch banking?" And if
4 he says no, I can't, the result of this situation is that I am
5 placed at the brunt end of the most restrictive ruling of either
6 the State or National Comptroller.

7 And whether the National Comptroller says, "No, you
8 can't do it," the state banks may be able to do it in this range
9 or ambit of other competitive items, and they are numerous. But
10 I cannot do this because I am held down by both of them.

11 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Edwards.
12 Mr. Smith?

13 ARGUMENT OF WILLIAM REECE SMITH, JR.
14 ON BEHALF OF RESPONDENTS

15 MR. SMITH: Mr. Chief Justice, may it please the Court
16 Before I try to deliver what prepared remarks I have,
17 I would like to speak to some of the questions which rose from
18 the Bench and I don't want Mr. Edwards to appear to be the only
19 expert on Plant City, Florida, here, which is where I was reared
20 and the other bank is a state bank, which is the bank in which
21 my family is interested, the Hillsboro Bank. So we have a little
22 local situation here.

23 Mr. Springer talked about the messenger riding the
24 truck. Somehow it has been overlooked that there is also a
25 trained paid teller on this truck, trained by the bank to do all

1 of the functions that a teller does at the bank. Both of these
2 gentlemen have referred to the depository as a hole in the wall
3 in the shopping center.

4 I invite the Court's attention to page 387 of the
5 appendix in this cause, to take a look at the hole in the wall.
6 What happened here was that Plant City got its first large
7 shopping center in its history and First National went out to
8 that shopping center and rented a store, then set up its depository
9 in the store within the interior mall next to the new chain
10 stores which were moving into the community.

11 When the shopping center opened, what happened? First
12 National got every new account, every large new account out at
13 that shopping center because it got the advantage of location
14 which is so important in banking. The Hillsboro Bank, the older
15 bank, the larger bank, one might assume would get a little business
16 out of it, got absolutely not a new customer.

17 The picture shows that there is a good deal more there
18 than a hole in the wall and that is my point.

19 Secondly, ---

20 Q I take the Florida statute forbids the bank -- oh
21 never mind. Go ahead.

22 A It does, sir. We so interpret it.

23 Q Would you mind telling me what is at the core of
24 this controversy?

25 A There are two arguments, Mr. Justice Black. The

1 first is what is the test to determine branching under 12 U.S.C. ---

2 Q I am not talking about legally speaking. I am
3 talking about practically speaking.

4 Q Practically speaking what is at the core of it
5 is that the national banks, through the ruling of the Comptroller
6 of the Currency completely reverses the rulings which the Comp-
7 troller of the Currency has been making for over 40 years as to
8 armored cars and to depositors, has gained a competitive advan-
9 tage over state banks in the State of Florida for performance
10 of basic essentials of banking.

11 It is not a very polite term -- the guts of banking,
12 may it please the Court, are the getting hold of money, getting
13 deposits, the cashing and paying of checks and the making of
14 loans, and Congress said under 36(f) that any one of those things
15 should be defined as a branch for purposes of 36(f) and ultimately
16 for purposes of references to state law.

17 Any one, and certainly one is clearly involved here,
18 which is receiving deposits. I am talking about the functional
19 act of receiving deposits, the getting the advantage of getting
20 the money, which is actually what First National is doing.

21 Q Let's take a little village out a little distance
22 from Plant City, 20 miles, and you find that Plant City sends
23 this traveling bag or traveling or whatever it is into that
24 community. It can get the deposits. Now how can the state bank
25 at Plant City compete with this?

1 A It can't, sir, except in ---

2 Q Of course you can pass a law authorizing it.

3 A Oh, yes, sir, it can, but that is a matter of
4 policy that Congress left for local determination, saying that
5 the state would have to decide whether branching in this area
6 should or should not be allowed. Our little bank can't dictate
7 state policy.

8 Q They can send in their deposits by mail.

9 A Yes, sir. That is true, they can do that.

10 Q Is that a satisfactory way of doing business?

11 A It is certainly not a satisfactory way to combat
12 the armored car, because it does a good deal more.

13 Q You take the position that the armored car is,
14 in effect, a moving ambulatory bank?

15 A I do indeed, sir, unfrt 46(f). I do indeed, sir.
16 It is the -- 36(f) says anyplace is a branch bank which is an
17 agency, an office or a place of business where either deposits
18 are received, checks are paid or money is lent, and that is pre-
19 cisely what is involved here. Certainly the armored car is
20 either an agency or an office or a place of business.

21 So, too, is the depository. We have lots of laundro-
22 mats in my part of the world which don't have any people out
23 there, but they are certainly places of business. And this
24 depository in the shopping center is clearly a place of business
25 where First National Bank gets a competitive advantage in the

1 control of an essential of banking, that is, receiving deposits.

2 And the only way they seek to avoid the argument which
3 I make and the way the Comptroller of the Currency said if the
4 way the Comptroller of the Currency said they could. The Comp-
5 troller, as I said, reversed himself. There are over 20 incon-
6 sistent rulings since 1929 with the ruling the Comptroller made
7 when he authorized this.

8 Q You said the rule had been otherwise for 20 years.
9 What has been the rule for 20 years?

10 A The Comptroller of the Currency had disapproved
11 and discouraged armored car operations, depository operations
12 of this sort on the ground they were branch banking under 36(f).

13 Q On the ground, is that in the record?

14 A Sir, we subpoenaed the complete precedents file
15 of the Comptroller of the Currency. We tried to take his depo-
16 sition, but they wouldn't let us do that. But we got the com-
17 plete precedents file and it is in evidence in this case.

18 Q And they have been called branch banks for 20
19 years?

20 A The Comptroller was saying that they were not
21 authorized in states which were non-branching states because it
22 violates the provisions of 36(f) and (c).

23 Q Do you quarrel with Mr. Springer's argument :
24 on the so-called choice of law question that you first have to
25 look at this in terms of Federal law?

1 A I don't know what Mr. Springer's argument is, may
2 it please the Court.

3 Q All right, the way you are casting your argument
4 I rather got the impression you were not quarreling with that,
5 but locking horns with the question as to whether or not this
6 was a branch or not a branch under Federal law.

7 A Respondents take this position, Mr. Justice Har-
8 lan. We say that there are about four different views which
9 have been advanced here. The first is that 36(f) is to be nar-
10 rowly construed without any reference whatsoever to the competi-
11 tive equality upon which the section clearly was placed in its
12 enactment.

13 We say that is wrong. We made this argument before
14 the District Court. It took that view. But we say even in that
15 event, if that is the correct view, then we still should have
16 prevailed because the contractual arrangements are fictitious,
17 the Court should perform to substance. There is no real agency
18 relationship and, accordingly, even by common law principle
19 agents of the bank are authorized to receive deposits and are
20 therefore receiving deposits off the premises.

21 The second argument is that we made an argument that
22 36(f) was exclusively Federal, it was a complete definition with-
23 out any reference to state law. But it should be construed
24 broadly and liberally for the purpose of effectuating competitive
25 equality.

1 This view, incidentally, is the position which is
2 taken in a little pamphlet by the Legislative Reference Section
3 of the Library of Congress in evaluating certain of Mr. Saxon's
4 rulings, and it suggests a broad construction.

5 We argued that construction before the District Court
6 until we found Judge Lindberg's unpublished opinion in state-
7 chartered banks. Then we had an authority better than a pamphlet
8 from the Library of Congress and so we began to rely without
9 moving away from the other argument, but arguing in the alter-
10 native we began to rely on Judge Lindberg's state-chartered
11 banks decision, which is at 36(f) a partial definition where
12 function is the important thing, function and physicality. That
13 is a prima facie test of branch banking under the Federal defini-
14 tion and if the operation meets that prima facie test, then the
15 threshold is crossed and you look to state law.

16 Now we support that view before this Court and recom-
17 ment to this Court as being the best view. It provides guide-
18 lines, it is flexible.

19 Q What did he hold?

20 A Sir?

21 Q What did he hold.

22 A Judge Lindberg, faced with a similar problem, ---

23 Q Who was he?

24 A He was a district judge in Washington, sir.

25 And he was one of the ones who grappled with this

1 thing in greatest depth first, and he took the position that
2 36(f) was a partial functional definition of branch banking, and
3 that if a given activity met that functional definition, then
4 the threshold was crossed and one should look to state law.

5 Q Well, I suppose you would admit this was a aggres-
6 sive service in the banking business.

7 A Yes, sir, I think I would have to admit that, but
8 I would also point out that in 1927 at the time the McFadden
9 Act was being debated, that there were many people who argued
10 branch banking was a progressive service, but it offered service
11 and convenience to the customer. And Congress decided, in
12 phrasing the McFadden Act as it did and taking the approach that
13 it did, that the question of service of convenience in this
14 area should be left for local determination.

15 Q Is that a national problem or a local problem?

16 A I beg your pardon, sir.

17 Q Is this a national problem or a local problem?

18 A In terms of the operation at hand I would it was
19 national, sir. I think that operations of this sort are being
20 considered and battled all over the country.

21 Q I presume this system of making deposits is
22 intended to supplant the old way of sending in the deposit by
23 mail. Is that right?

24 A I don't think it is, may it please the Court. I
25 think it is a different method of operation in addition to

1 sending them in by mail. The advertisements of this bank adver-
2 tises that they have banking by mail and that they also furnish
3 this service.

4 To be perfectly candid, sir, I see no justification
5 for this operation whatsoever in the way that First National
6 set it up except to gain a competitive advantage.

7 Q It seems to me there is a justification for it,
8 pragmatically speaking. I thought you were arguing on the legal
9 basis. It is not fair competition really.

10 I grew up in a town which was 400 people and 25 miles
11 from the closest bank. All of our business was done by mail.

12 A Yes, sir.

13 Q And, of course, we would have had a great advan-
14 tage if we would have had this system of making deposits.

15 A Yes, I understand that. And my response to the
16 need of your village, sir, was that in the context of this law-
17 suit, if the service was needed and the State of Alabama
18 decided it should allow the activity, then that is properly the
19 case. But it was for Alabama to decide and not for the Federal
20 Government.

21 When one is dealing with the three essential func-
22 tions -- I say not the Federal Government. I don't really mean
23 to say that because Congress can change the definition of 36(c)
24 and 36(f) if it wants to. Congress can take an entirely differ-
25 ent approach.

1 But I respectfully submit that it is solely for Con-
2 gress to do it. It is not for the Comptroller of the Currency
3 by ruling, it is not for First National Bank of Plant City and,
4 indeed, in respect to ---

5 Q And you say Congress hasn't done this, but the
6 Comptroller of the Currency ---

7 A That is correct.

8 Q --- has abandoned the old practice which has been
9 in existence for 20 years and then this, and that it violates
10 a Federal law, is that it?

11 A That is precisely my point.

12 Q Do you know how many states prohibit this type
13 of action?

14 A No, sir, I don't. I don't know that much about
15 banking. Mr. Bell will be speaking in a few minutes and he is
16 much better informed in that area than I am.

17 Q Is the precedents file, or whatever you call it,
18 in the appendix of the printed ---

19 A Not in the appendix.

20 Q But it was in the original record?

21 A It was in the original record.

22 Q Mr. Smith, if an independent contractor in your
23 city set up an armored car service, having no connection with
24 the bank, could he or would he be prohibited or controlled in
25 any way by the local banking laws of Florida in performing

1 precisely the same service as is performed here as an agent for
2 the reputed depositors?

3 A No, sir, he would not so long as he was a common
4 carrier for hire and had a certificate from our Public Utilities
5 Commission.

6 Q He would merely have to have the same kind of
7 relations, then, that a bus company or a truck line would have
8 for the local?

9 A For a purpose of going out to, say, a large com-
10 mercial customer who wants his money taken into the bank, but
11 there is a great distinction, may it please the Court, between
12 Brinks, for example, offering that service, and the First National
13 Bank in Plant City either offering it through its own armored
14 car or alternatively through First National hiring and control-
15 ling Brinks.

16 Q Let me pursue it a little bit. In the situation
17 that I set up hypothetically the customer would have to pay for
18 the service of the transit, would he not?

19 A Yes, sir.

20 Q Would it violate any banking law in Florida if
21 the bank offered to reimburse and credit the account of any
22 customer for whatever amount he had to pay for that transit
23 service?

24 A I am not sure, sir. I think the Public Utilities
25 Commission in Florida is going to have to look at this before it

1 is over, because when the bank begins to receive money for the
2 service, it is in my judgment at least going to be involved in
3 operating a common carrier for hire and we are going to have a
4 new battle over that subject. That's the reason they are not
5 charging at the present time. They are afraid to.

6 Q Mr. Smith, I take it that this Florida statute which
7 requires that a bank do all of its business in one place might
8 well bar things that no one would call branch banking.

9 A Yes, sir, I think that is possible, it would do
10 that.

11 Q If a bank wanted to set up a new business office
12 in some new development and put an agent out there and give him
13 an office to develop some customers, I suppose the banks have
14 their new business people going out calling on people all the
15 time, don't they?

16 A Well, I think we have to be careful with our
17 examples, Mr. Justice White. But to take an easy one, the bank
18 can operate a travel agency, a state bank can operate a travel
19 agency in Florida as part of the business of banking. I cer-
20 tainly ---

21 Q Does he have to do it on the premises?

22 A Sir?

23 Q Does he have to do it on the premises.

24 A As far as I know, he does it on the premises,
25 yes, sir.

1 Q But generally you would think that it is possible
2 that the Florida law might prevent things that aren't banking?

3 A I think that is possible, yes, sir.

4 Q And that a national bank could engage in those
5 practices because they aren't branches.

6 A That is correct.

7 Q And that is the argument here, I suppose. The
8 argument is ---

9 A To revert to that.

10 Q The argument here is that on the bank, the Plant
11 City Bank, it isn't a branch and therefore they can do it no
12 matter what Federal -- no matter what the Florida law is.

13 A Well, we go back to the test. How do we get
14 there? In the first place, is this an activity which falls
15 within 36(f) from a functional point of view, does it involve
16 the basic essentials of banking?

17 We say that it does. Therefore, the reference must
18 be the state law. At that level national and state banks will
19 be treated exactly the same by Florida law.

20 Q You are saying anything that Florida law would
21 call a branch would control 36?

22 A No, sir, I don't make that argument. I make the
23 argument that first Federal law ---

24 Q Because there is not the word "branch" in the
25 Florida statute at all?

1 A That is true, sir. I make the argument that when
2 one is dealing with the essentials of banking as is the case here,
3 that in order to determine whether the activity is a branch,
4 you first must apply 36(f). In the event that the activity is
5 one of those three things, then the reference is to state law.

6 Q Because once it does one of those three things,
7 it is a branch according to the Federal law, you say?

8 A It is a branch for purposes of 36(f), yes.

9 Q That is because, in your view, it is a place to
10 deposit?

11 A That is correct, sir.

12 Q And using the illustration you suggested yourself
13 of a travel agent, if out at this shopping center now this
14 National Bank maintained not this drop but a travel agency
15 service, at that place, it might be that Hillsboro would be pro-
16 hibited from doing that by Florida law. But I gather under your
17 view of the branching provision of 36(f), that would be inappli-
18 cable to the maintenance of a travel agency out of it?

19 A Yes, sir.

20 Q So to that extent it could be an inequality of
21 competition?

22 A That is true. And Congress was not concerned with
23 and did not try in the McFadden Act in this branching area to
24 give complete equality. We don't contend that complete equality
25 is required. We contend that complete equality is required as

1 to the functions of banking, and that no contracts, no notice
2 can change the fact that what First National is doing here is
3 getting control of money off-premises. The contracts don't
4 mean a hill of beans, to use a local expression -- excuse me.

5 Q It is local in quite a few places.

6 Q May I ask you what is meant now in the picture
7 you showed us on page 389.

8 A That shows ---

9 Q It seems to indicate that the car carries two
10 bank tellers. Is that true?

11 A I'm sorry, sir, I can't hear.

12 Q Reading this it seems to indicate that an armored
13 car carried two bank tellers, is that correct?

14 A They never put two aboard, sir, but that is an
15 interesting fact. The presentation has been made here that they
16 only were doing a rather limited thing, but it must be remembered
17 that this litigation broke out almost contemporaneously with the
18 commencement of these two operations.

19 And the early advertising within days before the liti-
20 gation commenced, as Mr. Justice Black notes on page 389 of the
21 record says, Rickerty was the bank president. He had the cars
22 in mobile driving staffed by an armed guard and two tellers.
23 It has a large window where customers may be served and a com-
24 munications system.

25 They contend that they haven't served any customers

1 from this counter, this complete teller's window which is in
2 the side of it.

3 Q What is the difference between that and the --
4 if any, I presume there must be some?

5 A Well, ---

6 Q In a regular bank if you go it in your car, you
7 can stand there in your car and give the money to the teller.

8 A There is none, sir.

9 And at that place that you refer there are receiving
10 deposits and therefore if they do it to the armored car, they
11 are likewise receiving deposits.

12 Now there is one point I would like to refer to before
13 it slips my mind. The presentation has been made here that all
14 that has happened in this operation is that money has been
15 delivered to customers and picked up and brought back. This is
16 done routinely six days a week by the armored car.

17 The armored car calls upon the depository twice every
18 day. At the depository it is not only night bags that are
19 placed into the depository, but also envelopes containing the
20 transmittal slip which is really just the regular deposit slip
21 with the conjured language on the back of it to try to make an
22 agency out of it.

23 And, and this is the most important point because it
24 should have resolved this case below and we should have never
25 been here, the District Court held that the matter of fact that

1 the First National was paying checks through this operation,
2 because it would actually deliver cash to a customer and take a
3 check in return drawn on the bank.

4 That is paying checks. That is a Section 36 function.

5 The District Court strangely enough said it is not
6 going to approve that, but it will approve the rest of the opera-
7 tion, because the First National is otherwise substantially com-
8 plying with the Comptroller of the Currency's rulings. We have
9 constantly argued that this was wrong. We made this point in
10 the Fifth Circuit, the Fifth Circuit didn't reach it.

11 We do not see how if in the course of the operation of
12 the armored car there was a paying of check operation, that that
13 can be ignored for the purpose of definition of 36(f). The argu-
14 ment is made that the question is moot because First National
15 promised to stop it.

16 No. 1, the record doesn't show that they stopped it.
17 No. 2, they are not restrained by the District Court from doing
18 it. No. 3, we are restrained from interfering with them, so we
19 can't find out what is going on. And No. 4, the promise to stop
20 a wrong ---

21 Q I didn't understand. You are restrained from
22 doing what? From interfering with them?

23 A With these operations.

24 Q What, by some sort of an injunction?

25 A By the District Court's ---

1 Q Well, it just decided against you.

2 A That which ---

3 Q You were the plaintiff. You were the plaintiff.
4 There was no restraining order.

5 A Well, the court just ---

6 Q They just decided against you.

7 A Sir?

8 Q You were the plaintiff. You were the plaintiff.
9 There was no restraining order.

10 A No, sir, there was no ---

11 Q That's right. Was there a restraining order
12 against you? Interfering with them?

13 A Actually the order wasn't ---

14 Q I just didn't understand.

15 A No, sir. The parties agreed to abide by the
16 Court's decision, which is the same thing.

17 Q Well, from what kind of interfering? I just
18 didn't understand your point 3.

19 A From interfering with these operations in any
20 way. Now I am speaking here not only for the intervenor state
21 banks, which I represent in the first interest, but also for the
22 Comptroller of the State of Florida.

23 The Court entered an order that the Comptroller of the
24 State of Florida should no longer interfere with these operations
25 by the First National Bank.

1 Q I see. I thought you were speaking on behalf of
2 your bank.

3 A Yes, sir. I'm trying to wear two hats here.

4 I would like to make this particular point because we
5 think it is most important. The argument is made that the use
6 of these contractual arrangements are not subterfuges. It has
7 now been suggested that they have some sort of a practical value.
8 This record will not support that whatsoever.

9 We made the argument from the commencement and sought
10 to prove it as much as we could that the use of these contractual
11 arrangements was solely for the purpose of evading the effect of
12 Federal law and particularly the effect of 36(f) and 36(c).

13 We showed that the Comptroller had reversed himself
14 when the Comptroller became Mr. Saxon. We showed Mr. Saxon's
15 letters in explaining his ruling. He expressly said that the
16 contractual arrangements were used so that 36(f) should not be
17 applicable.

18 We also showed that First National Bank by its letter
19 to the Comptroller expressly said we are using these contractual
20 arrangements exactly as you have required. These were used for
21 the purpose of meeting the Comptroller's regulation and avoiding
22 the effect of Section 36 and for no other purpose.

23 Now it has been suggested that there might be another
24 legitimate reason for using the contractual arrangements. It
25 simply won't hold water. All one has to do is to look at the two

1 basic contracts that are involved, the so-called "dual control"
2 contract on page 91 of your appendix and the so-called "trans-
3 mittal slip" on page 123 of your appendix, and any lawyer reading
4 that can see quite clearly that there wasn't any attempt to
5 limit liability. These are vastly different from the classic
6 night depository agreements where specifically availment is
7 spelled out.

8 The District Court did not make a finding of fact that
9 First National was not receiving deposits off-premises. The
10 District Court said that as a matter of law that these contracts
11 are clear and unambiguous on their face and the District Court
12 therefore refused to consider the purpose, the intent of the
13 contract whatsoever.

14 We made the same presentation to the Court of Appeals.
15 The Court of Appeals agreed with us. The Court of Appeals
16 expressly says that it finds plaintiff's arguments of agency
17 and the contract indefensible. It finds that it is engaged in
18 the use of paper evasions, and admittedly parties can contract --
19 a bank and its customer can contract as to when a deposit is
20 received. But this cannot be done for the purpose of frustrating
21 policy, for the purpose of evading law, and that is precisely
22 the only reason the arrangements were used.

23 And one can look all day, but with an honest heart,
24 you can find no other answer but that.

25 Now I would like to say ---

1 Q Mr. Smith, I gather your position doesn't depend
2 you succeeding with that argument, does it?

3 A Sir?

4 Q Even if these are perfectly bona fide contracts
5 and they set up all these relationships, I gather you would still
6 argue this is a service which is a branching service, wouldn't
7 you?

8 A Yes, sir, we have made just about all the alter-
9 native arguments we could. We take that one, too. We do think,
10 however, that that is an important point, Mr. Justice Brennan.

11 Q Well, but I just wanted to be clear. You don't
12 think it is so important that your case stands or falls on your
13 succeeding with it?

14 A No, sir, we have argued, as I said, four different
15 points of view, all bringing us to the same conclusion.

16 Q And neither does the Government?

17 A The Government has not advanced that argument.

18 I would like to close by saying one thing about the
19 Fifth Circuit opinion. It has been urged that the Fifth Circuit's
20 opinion doesn't follow the Judge Lindberg approach which we urged
21 before it, but that somehow it brings into effect a fourth point
22 of view, a fourth approach, which is that the policy of competi-
23 tive equality is so pervasive that virtually all off-premises
24 operations are going to be defined by state law.

25 We do not support that view as respondents, but I

1 confess we will be perfectly glad to accept it because our point
2 here is to win a lawsuit and that point of view will win our
3 lawsuit as well as the others will.

4 We do say, however, that the Fifth Circuit holding does
5 not stand for that proposition. The Fifth Circuit did not hold
6 so broadly, and we call attention to this fact. The Fifth Cir-
7 cuit must be read in the context of the arguments which were
8 made before it.

9 We argued alternative positions as we do here. But we
10 argued primarily, first, that the contractual arrangements were
11 evasions to obviate the effect of Section 36(f) and to frustrate
12 competitive equality. Secondly, we relied upon the functional
13 tests set forth in Judge Lindberg's opinion. Thirdly, we said
14 that this made Florida law applicable.

15 And the Fifth Court expressly holds seriatim, first,
16 that it rejects petitioner's argument of agency and contract,
17 that it signs the contractual arrangement and attempts to evade
18 the wishes of Congress, that Judge Lindberg's approach is approved.
19 Only then does the Fifth Circuit look to the Florida law.

20 Q Is your basic argument that this is a branch bank?

21 A Sir?

22 Q Is your basic argument that this messenger service
23 is a branch bank?

24 A It is for the purposes of Section 36(f) for the
25 purposes of determining whether it is a branch.

1 Q Does the building used -- is it the place you
2 pointed out, have a sign in it showing that that is a bank, the
3 First National Bank?

4 A Yes, sir. It has lots of nice signs both on the
5 side of the armored car and in the depository area.

6 Q In the depository?

7 A Yes, sir, there is no question.

8 Q Where is that depository?

9 A On the inside mall of the city's only large shop-
10 ping center right next door to all of the new chainstores that
11 moved into town.

12 Q And it has a sign there?

13 A It says, "This is the First National Bank's
14 messenger service."

15 The point I make is an important one for this reason.
16 As I pointed out, No. 1, First National got all of the big accounts
17 of this shopping center because of the location of this depository.
18 Secondly, at the time that First National sought authority
19 from the Comptroller of the Currency for these two operations,
20 the Hillsboro Bank was building its first new bank building in
21 40 years. It was the only bank in Plant City that survived the
22 Depression and it took an awful long time to get enough money to
23 build a new bank.

24 First National -- or rather, Hillsboro's banking
25 experience had indicated that within a given period of time that

1 the deposits of the Hillsboro, because of the new building,
2 should increase by about \$2 million. When that time arrived,
3 the deposits had increased only \$200,000, and by that time First
4 National was handling over a million dollars a week through
5 this service, ranging over 18 miles, going into additional trade
6 areas, serving incidentally, Mr. Justice Black, the City of
7 Dover is served by this armored car.

8 Q What?

9 A The little City of Dover, Florida, and it is a
10 good deal more than two filling stations.

11 Q Is there any other bank there?

12 A No, sir, there is no bank there.

13 Of course, it is argued in the brief that these things
14 which First National got and Hillsboro lost just show the value
15 of the service of convenience. But I point out again that this
16 is precisely the question which Congress was concerned with when
17 it faced this problem in enacting the McFadden Act. It held
18 that service and convenience is a question for local determina-
19 tion, and if that is to be changed, if operations off-premises
20 that affect the basic lifeblood function of banks are to be --
21 are not to fall within Section 36(f). We submit it is solely
22 for Congress to make that decision.

23 Thank you.

24 MR. CHIEF JUSTICE BURGER: Mr. Bell?

25

1 ARGUMENT OF JAMES F. BELL

2 ON BEHALF OF AMICUS CURIAE

3 MR. BELL: Mr. Chief Justice and may it please the
4 Court:

5 The 50 officials of the state government responsible
6 for the supervision and regulation of 6400 state-chartered banks
7 of the country have filed in a brief as amicus curiae for urg-
8 ing affirmation of the decision of the Court of Appeals.

9 Now because both our position and the opinion of the
10 Court below have been characterized in a manner by the petitioners
11 with which we do not agree, I would like at the outset of my
12 argument to pose the issue as we see it and its resolution by
13 the Court of Appeals below.

14 Now the petitioners argue that the determination of
15 what are off-premise activities of a national bank amount to a
16 branch is governed exclusively by 36(f) and they contend that all
17 that is involved in a case of this type is a technical analysis
18 of the understanding between the bank and the customer in the
19 light of applicable contract and commercial law to determine
20 whether there has been a deposit or check transaction placed in
21 the bank's business.

22 Now if there has been no transaction, there is no
23 branch and no reference to state law is required or permitted in
24 this analytical process. Now under this reasoning the Comptroller
25 of the Currency has recently ruled that national banks are not

1 branching when they engage in check-cashing or the depositing
2 process through off-premise shopping center depositories or
3 mobile facilities or when they they engage in the loan-making
4 process through off-premise loan production.

5 Now if the result is a competitive disadvantage, the
6 state banks who are prohibited such activity by branch policy
7 embedded in state law, the petitioners assert that this is pre-
8 cisely what Congress intended.

9 Now the construction of Section 36(f) we support, which
10 is the principal argument presented by the respondents and which
11 is the one reflected in the decision of the Court of Appeals is
12 this: The Court of Appeals started with this Court's decision
13 in the Walker Bank Case and there this Court had exhaustively
14 studied the legislative history of the branching provisions of
15 the McFadden Act of 1927 and the Banking Act of 1933 and reached
16 the conclusion that the dominant intent of Congress was to estab-
17 lish competitive equality between national and state banks in
18 the matter of branching based on state law.

19 And the Court then concluded that the only way to recon-
20 cile Section 36(f), and Section 36(c), the branching section,
21 within the framework of this congressional intent was to con-
22 sider Section 36(f) as a functional definition. If there is an
23 off-premise facility at which activities are performed essential
24 to the loans, deposits or check-paying process, then reference
25 must be made to state banking policy in state law to determine

1 that the off-premise facility would be a branch.

2 Now in other words, the Court of Appeals considered
3 Section 36 as a substantive definition of essential banking func-
4 tions, not as a technical delineation of the party's rights.
5 The whole controversy in the McFadden Act of 1927, when both
6 Section 36(c) and (f) were adopted, and later in the Banking Act
7 of 1933 revolved around the dispute between unit banking and
8 branch banking, and in the real world of banking the resolution
9 of that dispute did not make a contractual relationship described
10 in small print on a transmittal slip. It is made by determination
11 of the extent to which banks can compete off-premises in the
12 functional essentials of banking -- loans, deposits and checks.

13 Now that is what the Court of Appeals did and there is
14 no conflict or obscurity about it. It said that no matter how
15 you looked at it, unless you want to throw away all the concepts
16 in the business of banking, the off-premise activities in this
17 case inaugurated by the petitioners below involve the deposit-
18 making process.

19 And a similar determination has been made by the state-
20 chartered banks Case 4, and so they turn to state law and found
21 that off-premise activity would be prohibited. State banks under
22 the branching policy of the state, as reflected in its state
23 branch statutes. They therefore concluded it would be unlawful
24 for national banks and that was the decision which we, too,
25 seek.

1 Q Would you agree that Congress could authorize
2 national banks to do all the things that are challenged here?

3 A Yes, Mr. Chief Justice. There is no argument
4 that the Congress of the United States could have given national
5 banks this authority. The question is one of statutory construc-
6 tion, did it?

7 Now I would like to turn, if I may, at this point to
8 some of the lines of argument advanced by the petitioners against
9 this position.

10 The first one, I think, frankly is directed to the
11 wrong form -- the Courts rather than to the Congress. But
12 basically it is this: Imaginative and vigorous national banks
13 are developing modern concepts of banking which would be frus-
14 trated under the ruling of the court below because it was sub-
15 ject national banks to unfriendly state legislation construed
16 by unfriendly state banking departments and result in a disparity
17 of treatment of national banks by the various states.

18 This line of argument errs on at least six counts.
19 First, there is a disparity of treatment of national banks by
20 the various states and the matter of branching today. Twelve
21 permit unlimited branching, fifteen prohibit it altogether and
22 the remaining twenty-three adopt a middle ground with widely
23 varying restrictions offering some of the benefits of banking,
24 but trying to protect small country banks, for example, by expan-
25 sion of city banks.

1 So diversity was specifically intended by Congress when
2 it rejected the concept that branching should be determined by
3 Federal law. So the very diversity that the petitioners decry
4 that Congress wanted, because in every state there are differing
5 economies as well as divergent issues on the issue of branch
6 versus unit banking. And Congress sought to adopt that standard
7 as a measure of optimum of branching activities of that.

8 Second, with regard to this hypothecation of unfriendly
9 state legislation, the idea that a state is going to pass branch-
10 ing legislation that will hurt national banks when that legisla-
11 tion is equally applicable to state banks, is simply unsupport-
12 able. And when petitioners make this decision, all they are
13 doing as opponents of unit banking is saying they don't like any
14 restrictions of branching. But that is a matter which Congress
15 has decided the state should decide.

16 Now somehow, third, the concept that imaginative
17 national banks are now trying to keep up with the times and are
18 being hurt is deserving of the same answer. For what may be
19 imaginative expansion to some may spell a breakdown in unit bank-
20 ing and banking concentration to others.

21 Mr. Hansen has filed a brief for the Independent Bankers
22 Association making this point very strongly.

23 Now there are states which permit precisely the type
24 of activity petitioners argue here. California, for example.
25 But those states with a strong policy favoring unit banking,

1 such as Florida, do not. And there are arguments on both sides
2 of this issue. Congress has said state legislatures should be
3 the forum and national banks as well as state banks can go into
4 a state legislature anytime they want to to change the policy
5 of their state.

6 Fourth, the concept that the decision below somehow or
7 other places national banks at the mercy of supervisors or,
8 indeed, as the Comptroller posed the question this morning, that
9 state bank supervisors can invent something, we believe is totally
10 unwarranted.

11 The source of state law is not supervisor imagination,
12 but the statutes of the state reflecting its branch banking
13 policy. Now this whole field of off-premise activity is rela-
14 tively new today, so there are not many state judicial decisions
15 and as each instance arises the question comes up, is this in
16 accord with or contrary to branching policy of the state?

17 In the absence of judicial decisions supervisors usually
18 seek the advice of the state Attorneys General, who are called
19 upon to construe the statutes. Now each ruling is nondiscrimina-
20 tory, equally applicable to state and national banks. Each
21 ruling is subject to judicial review for its correctness and,
22 indeed, as has been pointed out here, the ruling of the Supervisor
23 of Florida itself is now before Florida courts for decision.

24 Now, fifth, the argument of the Comptroller that some-
25 how the results of the decision below is tantamount to supervisor

1 approval of Comptroller decisions is equally without merit. Of
2 course the Comptroller doesn't have to seek supervisor approval
3 of his decisions. But since Congress has provided a statutory
4 framework with an intermeshing of Federal and state law relating
5 to branching, sure that doesn't mean that an iron curtain has to
6 descend between the Comptroller's office and the State Supervisor.

7 Consultation as to the meaning of state law is not
8 tantamount to supervisor approval of the decision of the Comp-
9 troller. And indeed the Sixth Circuit in the Wayne Oakland Bank
10 case held that this intermeshing demonstrated that Congress
11 intended consultation and cooperation between the two agencies.

12 Now also and finally, the petitioner and their support-
13 ing amiciae have compiled a fearsome list of activities which
14 they assert the State Supervisors can strike down under the decision
15 of the court below on the guise that their branches are forbidden
16 under state law.

17 The functional definition of Section 36(f) does not
18 go to all banking activities. It goes to the essential banking
19 activities -- the loans, deposits and checks. And therefore any
20 such activities as signing a trust agreement in a law firm's
21 office and turning that law firm's office into a branch clearly
22 wouldn't even pass the functional definition.

23 Banking by mail, new business solicitation really
24 doesn't have any off-premise additional office or facility. So
25 what we are talking about here is the loan, check or deposit

1 functions of the type where there is a competition with other
2 banks for the public of the banking business, because that is
3 what the preservation of the unit banking system in those states
4 that have adopted it depends upon. When you go out and set up
5 a facility such as the setup in this case and get a million dol-
6 lars of deposits in a week, it is a darned competitive facility.

7 And this is what the Congress was talking about. It
8 was talking about giving the states the right to determine whether
9 or not you were going to have a unit or a branch banking system.

10 If you really follow the Comptroller's argument to its
11 ultimate decision, what he is saying is that anything that goes
12 on in a banking office can go on anywhere else if you surround
13 it with a whole bunch of agency contracts and other types of
14 contractual relationships so that the ultimate responsibility or
15 the technical completion of the loans, checks or deposit process
16 doesn't place until you have gotten back to the main office.
17 And if a national bank can go into a shopping center and set up
18 a loan production office and right next door is a depository,
19 desk, et cetera and right next to that a whole series of customers
20 where you can pick up checks and cash by mobile deposit, I ask
21 the question "Who needs a branch?"

22 Obviously, ---

23 Q Would you draw any distinction in your own mind
24 between the armored car service and the depository?

25 A Well, the armored car ---

1 Q For purposes of Section 36?

2 A No, sir. In my opinion they both involve essen-
3 tial elements relating to the deposit-making process.

4 Q Could you really call an armored car service that
5 is moving around the place of business a branch office or a
6 branch agency?

7 A It is an additional ---

8 Q Or a branch?

9 A It is a place of business, I would suggest, Mr.
10 Justice White.

11 Q A branch place of business?

12 A It is a branch place of business with essential
13 activities relating to the deposit-making process, because I do
14 not see how you can construe Section 36(f) in any other way and
15 still reconcile it with the basic competitive quality intent
16 of Congress.

17 Q Do you think the president of the bank every now
18 and then stops by a customer's place and picks up his deposit,
19 that's a branch place of business?

20 A No, sir. I think if you are talking about new
21 business ---

22 Q Because except under 36 you not only need the
23 acceptance of deposit, but you need to have those accepted at a
24 place of business.

25 A Yes, sir. I think that there are always going to

1 be gray areas in any operation of this type. But I think if
2 you look at Section 36(f) within the framework of what Congress
3 was trying to achieve, competitive equality with regard to a
4 banking business and locations of the banking business, that the
5 construction of the Court below was the correct one, which was
6 to refer to the state branch policy as reflected in statutes.

7 Now you are asking me a whole series of hypotheticals
8 under state laws.

9 Q No, it isn't hypothetical, because the armored
10 car service is here as well as the depository.

11 A Yes, sir.

12 Q There is nothing hypothetical about that.

13 A The depository and the armored car service are
14 essential elements of the meaning of the ---

15 Q Together or is each one a branch place of business?

16 A They are together in the sense that ---

17 Q If we had here only the armored car service with-
18 out the supermarket or that shopping center depository?

19 A I think that if you can go out and serve your
20 customers in a 20-mile area of the bank, to say that you are
21 operating solely within the framework of your main banking busi-
22 ness is simply impossible within the framework of the branch
23 policy definition.

24 Q Well, what I'm trying to get at now is your
25 position is that if we had no depository at the location of the

1 shopping center, if there were none there, you would still say
2 that there was a branch place of business in the armored car
3 service alone?

4 A If it was going out to pick up deposits at the
5 customer's place of business.

6 Q Well, that is just what he is doing, stopping at
7 the various chain stores establishments rather than going to the
8 depository?

9 A Yes, because you could not compete with the bank
10 that didn't have that authority if you couldn't do the same
11 thing.

12 MR. CHIEF JUSTICE BURGER: Mr. Springer, Mr. Edwards,
13 Mr. Smith, Mr. Bell, we thank you for your submission. The
14 case is submitted.

15 (Whereupon, at 11:50 a.m. the argument in the above-
16 entitled matter was concluded.)

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