

In the

Supreme Court of the United States

AMERICAN EXPRESS COMPANY,

PETITIONER,

v.

LOUIS R. KOERNER, SR.

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) No. 80-202

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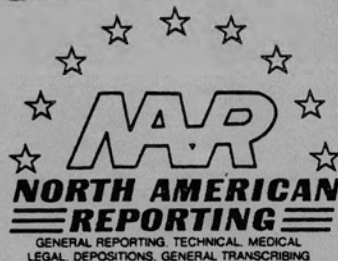
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Washington, D.C.

April 20, 1981

Pages 1 through 45

ORIGINAL



1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----:
3 AMERICAN EXPRESS COMPANY, :

4 Petitioner :

5 v. :

: No. 80-202

6 LOUIS R. KOERNER, SR.. :

7 -----:

8 Washington, D.C.,

9 Monday, April 20, 1981

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States
12 at 10:13 o'clock a.m.

13 APPEARANCES:

14 RONALD J. GREENE, Esq., Wilmer, Cutler & Pickering,
15 1666 K Street, N.W., Washington, D.C. 20006;
on behalf of the Petitioner

16 LOUIS R. KOERNER, JR., Esq., Law Offices of Louis
17 R. Koerner, Jr., A Professional Law Corporation,
1204 Jackson Avenue, New Orleans, Louisiana
18 70130; on behalf of the Respondent.

C O N T E N T S

ORAL ARGUMENT OF

PAGE

RONALD J. GREENE, ESQ.,
on behalf of the Petitioner

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LOUIS R. KOERNER, JR., ESQ.,
on behalf of the Respondent

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ORAL REBUTTAL ARGUMENT OF

RONALD J. GREENE, ESQ.,
on behalf of Petitioner

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1 P R O C E E D I N G S

2 MR. CHIEF JUSTICE BURGER: We will hear arguments
3 first this morning in American Express Co. v. Koerner.

4 Mr. Greene, you may proceed whenever you are
5 ready.

6 ORAL ARGUMENT OF RONALD J. GREENE, ESQ.,

7 ON BEHALF OF THE PETITIONER

8 MR. GREENE: Mr. Chief Justice, and may it please
9 the Court:

10 This case turns on what we view as a relatively
11 simple question of statutory construction. It requires
12 the Court to construe the meaning of Section 104(1) of
13 the Truth-in-Lending Act. That section provides an exemp-
14 tion from the entire Act for business credit transactions.
15 The precise statutory language is, "transactions involving
16 extensions of credit for business or commercial purposes."

17 The question before the Court today is whether
18 this language makes the Truth-in-Lending Act inapplicable
19 to the business credit cards issued by American Express
20 to the company for which Respondent works.

21 Now American Express says that the exemption
22 applies because the cards in question were business cards,
23 obtained by a business enterprise for business purposes.
24 Respondent counters that the exemption should not apply
25 because he, together with his employer, was jointly liable

1 for any charges on the account and because allegedly, on
2 some occasions he used the card to make personal purchases.

3 Now, time permitting, there are three basic points
4 that I'd like to cover this morning. First, I'd like to
5 review briefly the precise statutory language that we
6 feel is dispositive. It is our position that this language
7 clearly and without any equivocation, exempts all business
8 card systems from the Truth-in-Lending Act.

9 Second, I'd like to discuss the position that
10 the Federal Reserve Board has taken on the issues before
11 the Court. Under this Court's decision in Ford Motor v.
12 Milhollin, the rulings of the Federal Reserve Board are,
13 we think, dispositive.

14 And finally, I'd like to touch on the fundamen-
15 tal policy considerations that we think are reflected in
16 the business credit exemption. And the Fifth Circuit
17 decision which we've asked this Court to reverse is partic-
18 ularly troublesome because it reflects an insensitivity
19 to these fundamental policy considerations. And also,
20 because it might lead to the imposition of an exceptionally
21 complicated and convoluted regulatory scheme in an area
22 where Congress and the Federal Reserve Board never thought
23 that it should be applied. Application of those regulations
24 in this area would impose wholly unnecessary regulatory
25 costs in an area that Congress specifically decided it

1 was not going to regulate.

2 Now, there are no disputes about the facts in
3 this case; it comes here on a motion for summary judgment
4 that was granted by the District Court. Mr. Koerner, the
5 Respondent, was an officer of the John E. Koerner & Co.
6 In 1965, the company applied to American Express for issu-
7 ance of a company card for Mr. Koerner's use. Other
8 employees also were to receive cards; five cards were
9 ultimately issued on this account. American Express
10 checked out the company's credit, and issued all five cards.
11 It also obtained Mr. Koerner's individual signature, and
12 that made him liable together with the company for any
13 charges on his particular card -- not on the other four
14 cards, but on his particular card.

15 QUESTION: Did the company investigate the
16 credit rating of any of Mr. Koerner -- or of any of the
17 other four employees?

18 MR. GREENE: No, Mr. Justice, just the company.
19 If you look at the application form which is in the joint
20 appendix on page 27a, you will see that there are listed
21 there credit references of the company, Whitney National
22 Bank, Hibernia National Bank, and so on. International
23 Milling Company. These are credit references of the company
24 and it was the company's credit that stood behind the
25 account.

1 You will also see from that application form that
2 it notes in --

3 QUESTION: Well, you say that the company stood
4 behind it. Are you suggesting that American Express was
5 looking only to the corporation, not to the individuals?

6 MR. GREENE: Well technically, the individual
7 employees were jointly liable with the company for any
8 charges on their particular cards. What I was pointing
9 out, Mr. Chief Justice, was that the credit checks that
10 were made and that are made, for company cards, look to
11 the company's credit worthiness as the basis for --

12 QUESTION: Well, what I was trying to clarify,
13 because I wasn't sure what you meant, is there any differ-
14 ence in the relationship between American Express and Mr.
15 Koerner, and American Express and the other four men?

16 MR. GREENE: No, Your Honor.

17 QUESTION: Individually.

18 MR. GREENE: No.

19 QUESTION: How about the relationship between
20 the individual and the company, and the individual and
21 American Express; could American Express have gone after
22 him for the personal charges?

23 MR. GREENE: It could have, Mr. Justice. As a
24 matter of practice, it does not, it goes after the company.
25 In this case, the record reflects that all the bills

1 were sent to the company at the company address. The
2 correspondence relating to the billing error inquiries
3 were between the company bookkeeper and American Express.
4 Ordinarily, with these accounts, it is the company that
5 is primarily involved. There are --

6 QUESTION: But it could have gone after the
7 individual for all of the charges, couldn't it?

8 MR. GREENE: It could have. It could have.
9 The purpose for the individual liability is primarily to
10 assure the company, the Koerner Company, in this case,
11 against misuse of the cards by their employees. There
12 are, under Section 135 of the Truth-in-Lending Act, where
13 you have a business card system where ten or more cards
14 are issued -- that wouldn't have applied in this case --
15 but where there are ten or more cards, the credit card
16 issuer and the company getting the cards are allowed by
17 contract to negotiate between themselves any division
18 of liability they want to negotiate without regard to the
19 \$50 limit on liability for unauthorized use of credit
20 cards that would otherwise apply. And what often happens
21 in these company card situations is that American Express
22 will reach an agreement with the company that will allow
23 the company, in the case of an employee who leaves town
24 without paying his bills, the company will inform American
25 Express, cancel the card and then American Express will

1 go after the employee rather than the company.

2 QUESTION: What does the record show as to the
3 payment of these accounts? Payment by the checks of the
4 corporation in all instances, or --

5 MR. GREENE: No, there were apparently some
6 instances where personal checks of the employees were also
7 sent, as well as company checks.

8 QUESTION: Well, are we to infer from that that
9 sometimes the employees used it for personal purposes,
10 and then paid with a personal check, but when it was for
11 a corporate purpose it was paid for by a corporate check?

12 MR. GREENE: Well, that's possible, Mr. Chief
13 Justice. The record does not reflect that. In our view,
14 that is irrelevant to the case, however. The question is,
15 in our mind, as far as the application of the business
16 credit exemption is concerned is whether the card was
17 issued for a business purpose, not whether it was used for
18 a business purpose. A creditor must know when a credit card
19 is opened, whether the account is covered by the Truth-
20 in-Lending Act, or whether it is exempt. The most impor-
21 tant reason is found in Section 127 of the Truth-in-Lending
22 Act which requires initial disclosures to be sent to all
23 cardholders before the first transaction on the account.
24 So you have to send out these initial disclosures before
25 any charges have been made at all. And the creditor has

1 to know, at that time, whether the card is going to be
2 covered by the Act and therefore the disclosures have to
3 be sent, or whether it's exempt. And the Federal Reserve
4 Board has taken precisely this position in its newly
5 issued Regulation Z, which came out just a couple of weeks
6 ago, where it, in its new definition of cardholder, defines
7 a cardholder as a person to whom a card is issued for
8 consumer credit purposes. The question is the purpose
9 for the issuance of the card, it's a prospective kind of
10 test. It's very similar to a situation outside the credit
11 card area where you might have a loan that's taken out at
12 the bank. The lender at the time the loan is taken out
13 must make the decision because of the Truth-in-Lending
14 disclosures. And he hands over the loan proceeds and
15 once the customer leaves the bank he could use that money
16 for whatever he pleases.

17 QUESTION: Well, Mr. Greene, there are -- do you
18 -- does the company make the disclosures every time it
19 issues a new card, every year?

20 MR. GREENE: Yes, Your Honor. It makes the
21 initial disclosures before the first use of the card and
22 then American Express, at least, makes new disclosures
23 each year.

24 QUESTION: Must it? Must it?

25 MR. GREENE: Well it must make initial disclosures

1 at the beginning --

2 QUESTION: Well I'm asking you how about on reissue?
3 When -- I suppose this card was reissued every year?

4 MR. GREENE: A renewal card was sent.

5 QUESTION: Yes. And there are disclosures then?

6 MR. GREENE: There are disclosures. I don't
7 believe they are required, except where there's a change
8 in terms.

9 QUESTION: Well, suppose a card like this is
10 never used for business purposes, as it turns out, it's
11 used completely for personal use. It never -- and the
12 employee makes the payments directly to the company.

13 MR. GREENE: Well, American Express would have
14 no way of knowing what the card was being used for, or
15 whether those purchases are personal or business; all it
16 gets are copies of the credit card slips from the merchant.
17 They can't tell whether that's a personal use or a business
18 use; it has to rely upon the representations that are made
19 to it at the time the account is issued. And in this case,
20 the application form which Mr. Koerner signed and which
21 the company signed as well, clearly labels the application
22 as one for a company account.

23 Perhaps I could --

24 QUESTION: Even though every payment -- the payment
25 for every charge on the card is made by him personally, and

1 not by the company?

2 MR. GREENE: Well, that may not indicate that
3 the charges were business charges. I, for example, have a
4 company American Express card from my law firm, and I often
5 pay for the charges with a personal check and then receive
6 petty cash from the company, from the law firm, in reim-
7 bursement. The nature of the payment doesn't necessarily
8 determine the issue.

9 QUESTION: So it really isn't the purpose, it's
10 what somebody says the purpose is?

11 MR. GREENE: Well, it's -- in this case, there
12 is a contract, Your Honor. There is a contract between
13 American Express --

14 QUESTION: I'm just trying to find out what
15 your theory is. It isn't a matter of fact, it's a matter
16 of --

17 MR. GREENE: Agreement.

18 QUESTION: -- contractual representation.

19 MR. GREENE: And it's a matter that has to be
20 determined at the outset, before the account is used.

21 QUESTION: Well, your -- that argument depends
22 upon the hypothesis, does it not, that the extension of
23 credit occurs when the card is issued?

24 MR. GREENE: Well an extension of credit --

25 QUESTION: Yes.

1 MR. GREENE: -- certainly occurs then. I wouldn't--

2 QUESTION: And I thought of a credit card, or
3 at least it can be argued, that a credit card is no more
4 than an agreement to extend credit in the future.

5 MR. GREENE: Well, the definition of credit
6 contained in the Truth-in-Lending Act is broad enough so
7 that the opening of an account has to be viewed as an
8 extension of credit. If it weren't --

9 QUESTION: Even though the card is put by the
10 cardholder into his desk drawer and never used?

11 MR. GREENE: Well certainly --

12 QUESTION: That's an extension of credit?

13 MR. GREENE: -- an extension of credit is the
14 right to defer payment.

15 QUESTION: It's not -- well, it's an agreement
16 to extend credit in the future, is it not?

17 MR. GREENE: Yes, and that constitutes an exten-
18 sion of credit. For example, if American Express were to
19 discriminate against someone in opening accounts, and let's
20 say, refused to open accounts for women, under the Equal
21 Credit Act, the refusal to open an account for a woman
22 would be a refusal to extend credit and would give her a
23 right of action. The opening of an account is-- has to be,
24 an extension of credit.

25 QUESTION: Well, it has to be to support your

1 argument, does it not?

2 MR. GREENE: It has to be an extension of
3 credit; I'm not denying that it's used for --

4 QUESTION: To support your statutory argument?

5 MR. GREENE: That's right. That's right.

6 QUESTION: Well what do you make then, of the
7 first clause of Section 104(1), credit transactions in-
8 volving extensions of credit for business or commercial
9 purposes -- are not covered by the subsection.

10 MR. GREENE: Well, I think that language is
11 crucial to us, Mr. Justice Rehnquist. It indicates clearly
12 that you can have extensions of credit within an overall
13 transaction. The language is, transactions involving
14 extensions of credit for business or commercial purposes.

15 QUESTION: Well Mr. Greene, isn't your position
16 pretty much that the key really is the purpose of the
17 extension of credit -- and where the purpose is business
18 and it is established here by the application form itself
19 as being for business -- that brings you within the exemption?

20 MR. GREENE: Precisely. Precisely, Your Honor.

21 QUESTION: Even if, as a matter of fact, that's
22 false, the purpose is false? In the sense that it's never
23 used, and --

24 MR. GREENE: Well, I could conceive of a case,
25 Your Honor, where if someone were to come into American

1 Express and say, two years later, I got a business card
2 from you but I'd like to change it over into a personal
3 card.

4 QUESTION: Well, I can certainly conceive of a
5 situation where someone couldn't get a card of his own but
6 he could get one with the company's name on it and he
7 never intended to use it for business purposes. Solely
8 personal.

9 MR. GREENE: I would -- that should hardly
10 entitle him to --

11 QUESTION: That wouldn't change your case.

12 MR. GREENE: No, it wouldn't. Because the credit
13 transaction here was a business credit transaction.

14 I should point out, that American Express issues
15 two kinds of cards: it issues personal cards, and those
16 are the vast majority of all cards that are issued; something
17 like 90 percent of the cards. And it issues company, or,
18 corporate cards, which are the kinds of cards involved in
19 this case. Now Mr. Koerner individually, could have applied
20 for a personal card on a different application form and he
21 -- if he qualified for credit -- could have received it.
22 And then he would have received all of the disclosures
23 under Truth-in-Lending, and all of the protections. If he
24 did not, the company applied for a business account, and then
25 the company authorized a card to be delivered to Mr. Koerner

1 and the four other employees. That changes the nature of
2 the transaction. The company name was on the card, the
3 company received the bills, the company's credit was at
4 stake; this is a business credit transaction and the
5 agreement between American Express and the Company makes it
6 so.

7 Perhaps, if I -- if we look a little bit at the
8 particular section of the Act that American Express was
9 charged with violating, you will see why an account can't
10 be half fish and half fowl, why it has to be all business or
11 all personal. Section 161 of the Act applies only to open-
12 end, consumer credit plans, that's the statutory language.
13 Now, an open-end credit plan by its very nature involves
14 a continual flow of credit extensions, as part of an over-
15 all credit plan. Now, a creditor, in order to comply with
16 the Fair Credit Billing Provisions, has to set up a complete
17 compliance program to assure that the statutory deadlines,
18 that are set in Section 161, are satisfied. You have to
19 respond within 30 days, and then within 90 days in specific
20 ways, and you have to conduct certain kinds of investiga-
21 tions within certain time periods.

22 The creditor has to set up these procedures for
23 a category of account, and when it gets an inquiry it
24 has to know whether to assign it the deadline that the
25 statute requires or whether not to assign it a deadline.

1 The inquiry, the credit card issuer will have no way of
2 knowing whether the inquiry relates to a personal charge
3 or to a business charge. In fact, it may relate to no
4 charge at all, it may be a use -- a charge that appears
5 on the statement where the cardholder had never made any
6 purchase. It might just be an error on the bill. Or it
7 might be one of the statutory definitions of the billing
8 error is a mistake in computation. It might be a mistake
9 in adding up a number of charges, some of which were busi-
10 ness and some of which were personal.

11 So, the creditor has to know, to comply with that
12 Section, whether the account is fish or fowl; whether it is
13 business or personal. And in this case, this account was
14 categorized as a business account.

15 QUESTION: To what extent, Mr. Greene, is that
16 an analogy with a letter of credit?

17 MR. GREENE: It's very similar, Your Honor; that
18 would involve an agreement by a creditor to make extensions
19 of credit in the future, and if that agreement were between
20 a lender and a business debtor, it would not be covered by
21 Truth-in-Lending. Section 103(h) of the Act confirms this
22 reading. That Section defines consumer, and consumer credit
23 in the substantive provisions of the Act, like 161 that I
24 was talking about a moment ago, use the word consumer. Now
25 Section 103(h) says that consumer credit is credit primarily

1 for personal, family or household purposes. It has the
2 word primarily in it. That, in our view, reflects that
3 you can't have a mixed purpose account, and that the
4 creditor has to make a judgment at the outset, admittedly
5 at the risk of making a mistake and then being liable under
6 the law.

7 QUESTION: So Mr. Greene, what's the significance
8 of the last sentence of letter 727, "however we suspect
9 that few cards, if any, which are issued with the corpora-
10 tion as the cardholder would fall within this category."
11 Isn't there an implication in that that there might be
12 some cards?

13 MR. GREENE: There might be, and I don't --

14 QUESTION: I mean, although ostensibly a business
15 card, where in fact it is established that it was primarily
16 for personal use, this suggests that while ordinarily that
17 wouldn't happen with a corporate card, it might happen.

18 MR. GREENE: It might happen, and I don't dis-
19 agree with that, Your Honor. This case arises on a motion
20 for summary judgment. We put in the record the application
21 forms, it is admitted through discovery that all billing
22 was to the Koerner Company as a business account, that's an
23 admission of the Plaintiff, we have the contract in the
24 record which says it's a company account, and the Plaintiff
25 put in no evidence indicating that this was to be a personal

1 account.

2 QUESTION: You mean, at the time of the issuance?

3 MR. GREENE: At the time of the issuance. I
4 assume that if somebody sent in the same company card
5 application form that's in the record and put a cover letter
6 on the front of it, saying I need this card for personal
7 purposes, that would change the case significantly. But
8 that --

9 QUESTION: Well I gather probably American
10 Express would not have issued a card in the name of the
11 company then, would it?

12 MR. GREENE: If that, the procedures are if that
13 were to happen, it would issue a personal card, which as I
14 said, is the vast majority of the cards that American
15 Express issues.

16 QUESTION: But you won the motion for summary
17 judgment in the District Court, did you not?

18 MR. GREENE: We did, Mr. Justice --

19 QUESTION: So doesn't that mean that all infer-
20 ences have to be resolved against your client?

21 MR. GREENE: Well of course it does, but in this
22 case, we put in the evidence that I've cited, and under
23 Rule 56 the Plaintiff was required to come in with any
24 affidavits to counter that that were required, and he didn't
25 put in any.

1 QUESTION: But unless -- notwithstanding his
2 failure to produce affidavits, there was a genuine issue
3 as to material fact, in which case you were not entitled
4 to prevail.

5 MR. GREENE: If there were an issue of material
6 fact, but we don't believe there is an issue of material
7 fact because of the explicit agreement among the three
8 involved parties: the John Koerner Company, Louis Koerner
9 and American Express Company, a contract that this was to
10 be a company account and a stipulation during discovery that
11 all billing was done as a business account. We think that
12 that's sufficient to support summary judgment. Summary
13 judgment is really the common mode of proceeding in most
14 of these Truth-in-Lending cases, because in most cases the
15 issues will turn on a construction of contractual agree-
16 ments or language in a form, and it is not at all unusual
17 for cases to come up in summary judgment contexts. The
18 Mourning v. Family Publications Services, Inc. case that
19 this Court decided was a summary judgment case. And most
20 of the cases that we've cited in our brief, the District
21 Court and the Court of Appeals cases are summary judgment
22 cases. The issue is one of construction of the agreement
23 in question.

24 I'd like just to mention before my time for my
25 main argument is concluded, the most recent actions of the

1 Federal Reserve Board. Under the Truth-in-Lending Simplifi-
2 cation and Reform Act of 1980, the Federal Reserve Board was
3 required to issue by April 1, '81, a totally revised
4 Regulation Z. And it did that a couple of weeks ago, and
5 we have set forth in our reply brief the crucial sections
6 of that Regulation. That new Regulation is now in effect,
7 and governs the actions of creditors at this time. The
8 1980 statute did not amend any of the sections of the law
9 that we've been talking about this morning. It did, however
10 require the new regulation and in the new regulation, the
11 Board, in its commentary on the Sections that I've set forth
12 in the brief, notes, and we have the quotation -- in
13 footnote 10, on page 9, that the new regulation is simply
14 an interpretation of both the old and the new law and not
15 a change in law.

16 And that new regulation follows the approach that
17 I outlined this morning, it talks about the issuance of a
18 card and defines whether it's a business or a consumer
19 card by the purpose for which the card is issued. I'll
20 reserve the rest of my time for rebuttal.

21 MR. CHIEF JUSTICE BURGER: Very well. Mr. Koerner.

22 ORAL ARGUMENT OF LOUIS R. KOERNER, JR., ESQ.,

23 ON BEHALF OF THE RESPONDENT

24 MR. KOERNER: Mr. Chief Justice, and may it
25 please the Court:

1 Your Honors, I am very honored and pleased to
2 be here. I am also pleased and honored that this narrow
3 and somewhat unique case as important as it is to my
4 family, was important enough to merit the consideration of
5 this Court.

6 This is a litigation that need never have happened.
7 This is a case in which a man of principle was embarrassed
8 for no reason by employees of American Express as impersonal
9 as the computers that they served. This is a lack of --
10 this case arose because of a lack of good manners and proper
11 etiquette and breakdown of proper business practices.

12 QUESTION: Although the Truth-in-Lending Act
13 doesn't deal with proper business etiquette, does it?

14 MR. KOERNER: Well in a way, this -- the Fair
15 Credit Billing Act in a way does. What they've done is,
16 they've imposed as a matter of law, what is ordinarily good
17 practice, which the legislative history suggests that most
18 creditors have done anyway.

19 That's the reason I mentioned that.

20 QUESTION: Well but you wouldn't suggest that
21 an argument over a bill or an argument over a plane reser-
22 vation or something like that paid for with a credit card
23 would come within the Truth-in-Lending Act simply because
24 it was a violation of good etiquette?

25 MR. KOERNER: No, not at all. What happened is --

1 QUESTION: There's no question here that there
2 was a violation of law?

3 MR. KOERNER: That's correct. What would have
4 happened though, here, is that --

5 QUESTION: If this was covered by law.

6 MR. KOERNER: What would have happened here is
7 -- what my father was looking for was an apology, and this
8 suit would never have been brought. We sent a draft suit
9 to American Express, looking for an apology which never
10 happened, and then like, things got -- really grew and grew
11 and grew. By the way, you'd be interested to know last
12 week my father received three invitations from American
13 Express to join -- two corporate and one personal. John E.
14 Koerner & Company was formed in 1907 by my grandfather, as
15 a flower wholesaler. In 1965 -- by 1965, my father and
16 his two brothers, both of whom are now deceased, were the
17 managers of the company. In 1965, they made a decision to
18 go to credit cards, company credit cards, rather than use
19 individual credit or cash advances.

20 And this particular card my father signed as a
21 joint applicant, jointly and severally, or under Louisiana
22 law what they call in solido liable. And there was no
23 restriction on the card at the time to show that it was
24 restricted as to credit or as to use.

25 Now, there was no credit information requested of

1 the individuals, but it is the policy of credit card
2 companies to investigate the individual's credit reference
3 in a closely held corporation, and there's no evidence
4 in the record either way as to whether that was done. If
5 you remember Mr. Greene's response to Your Honors' questions
6 indicated, I think, some ambiguity as to whether that was
7 done or not. So I don't think the record is clear, and if
8 there's any inference to be drawn, it's -- the inference
9 would be that they may well have looked to the individual's
10 credit background. My father is well known to the Whitney
11 Bank and the Hibernia Bank, and to the International Milling
12 Company.

13 QUESTION: But the credit information was sub-
14 mitted only with respect to the corporation?

15 MR. KOERNER: Correct. But it is very simple,
16 particularly in 1965, to simply run a credit check on the
17 mainly liable individuals.

18 And in addition to that, if they didn't want
19 some credit of the individuals, why make them co-principals
20 and jointly and severally liable? Now, what happened is
21 that eventually -- one other thing that's interesting about
22 this is that the credit card application was in 1965, which
23 is several years predating the Truth-in-Lending Act, so
24 what American Express wishes us to do is to look back to
25 a time in the past when the Truth-in-Lending Act had not

1 been enacted, nor had the credit card amendments been
2 enacted in order to find a manifestation of the will of the
3 the parties. In addition, what's interesting here is that
4 during that intervening period of time in the '70's,
5 American Express did send the company a -- let's see,
6 the method by which a complaint could be made and acknow-
7 ledged. And that's reported at -- in Judge Ball's opinion
8 at 444 F.Supp. at 342, Note 32. He -- we did not contend
9 that was an estoppel on American Express, because that
10 wouldn't affect the statutory construction. But it is
11 evidence of the will of the parties, that is, one of the
12 only manifestations that the parties have made that there
13 is some will that this should be -- considered consumer
14 credit.

15 Now, in 1975, because of lack of use by Mr.
16 John E. Koerner, Jr. and personal use by my cousin,
17 Ralph, and also the fact that Bankamericards were free
18 and had no fee, they decided to go with Bankamericards
19 primarily. With regard to my father, he kept his business
20 American Express card because it was convenient to use in
21 Europe on European trips and on trips, whether it was --
22 where Bankamericards were not recognized.

23 Now, at that time, they sent two cards back but
24 were never credited. In addition to that, there was flight
25 insurance that was automatically billed to the card. For a

1 period of time that was a satisfactory arrangement, then it
2 was cancelled. They continued to bill the Koerner
3 Company, for the personal -- for the flight insurance.
4 My father authorized payment for a while, sending letters
5 saying, do something. But then it got to the point where
6 he felt that it wouldn't do any good and that the only way
7 to get their attention was just to simply not pay and send
8 them a letter explaining why they would not pay, which is
9 the procedure that is set up under the Act.

10 Now, in September of 1976, which is the month of
11 the credit card revocation, as late as that month, my
12 father sent in personal checks for personal business -- for
13 personal use of the card during that month or the preceding
14 month. There were numerous personal checks sent over a
15 period of time. We did not submit an affidavit, but we
16 did answer interrogatories in which we lined out some of
17 the personal uses that he was able to find by going through
18 his cancelled checks. So, for a period of time, even to
19 the same month involved, the checks individually were sent,
20 by my father on his personal account for personal uses.

21 Now, in 1976 --

22 QUESTION: Mr. Koerner, could I interrupt you
23 for a second?

24 MR. KOERNER: Certainly.

25 QUESTION: What is your basic theory here? Is

1 it that the individual is jointly liable on the account,
2 or is it that the individual made some personal use of
3 the account.

4 MR. KOERNER: Both. Okay, first --

5 QUESTION: Do you require both, or -- under the
6 statute?

7 MR. KOERNER: No, I don't think we require both.
8 However, we have both. The first thing is, he's jointly
9 and severally liable, which -- I don't know what the common
10 law is, but under Louisiana law, that means he is a co-
11 principal. So that's one --

12 QUESTION: I understand. But how does -- we have
13 to relate it back to the statute.

14 MR. KOERNER: Okay, the statute protects con-
15 sumers. He is a consumer, the card was issued to him.
16 The credit card application talks about joining in the
17 application with the company, but my Uncle John, he was an
18 individual applicant. So the card was issued to him and
19 to the company, jointly, with his name on it and with the
20 company's name on it.

21 QUESTION: So under that construction, you would
22 win, if all of the transactions were business transactions?

23 MR. KOERNER: That is one possibility.

24 QUESTION: The other possibility is that if there's
25 any one personal transaction on the account, you would win

1 even if he weren't jointly liable, I suppose?

2 MR. KOERNER: Correct. But that's -- I think it's
3 nice to have both -- though. But what happens here is that
4 there's -- in addition to that, on the revocation there
5 were no extensions of credit.

6 QUESTION: Can you summarize in about two
7 sentences what you think American Express should have done
8 under the statute here which it did not do?

9 MR. KOERNER: Acknowledge the dispute.

10 QUESTION: Apologize? Isn't that the word you
11 used?

12 MR. KOERNER: Yes sir. But that -- even an
13 apology afterwards would have worked. But beforehand, this--
14 remember -- there's a year of correspondence between the
15 company, on behalf of my father and American Express.

16 QUESTION: The statute does a whole lot of things,
17 but it doesn't require apologies, does it?

18 MR. KOERNER: No.

19 QUESTION: Well, then what does the statute require?

20 MR. KOERNER: The statute requires that while
21 there is a dispute, and American Express, the issuer is
22 notified of the dispute, that they do not revoke the card
23 until they take certain steps, that's all.

24 QUESTION: And that's what you claim was errone-
25 ously done here, when the credit card was cut in two?

1 MR. KOERNER: Correct. In other words, what
2 happened is that -- as a matter of fact, after the date of
3 the revocation there was no further money paid on the
4 account, because the account was credited in full by
5 American Express. All of the \$55 worth of disputed charges
6 were acknowledged and credited out, as having been improper.
7 There was never any money paid. So, we have the strongest
8 possible situation. We have no extensions of credit
9 that were in dispute; merely improper charges by American
10 Express that should never have been made.

11 QUESTION: So what's going to happen if you win?

12 MR. KOERNER: In this particular, what's going
13 to happen --

14 QUESTION: In this particular case, if you win?

15 MR. KOERNER: Okay. In Louisiana --

16 QUESTION: Well, I mean in -- with respect to
17 your client.

18 MR. KOERNER: It will reverse the summary judgment.
19 I don't think there's any money to be involved, because the
20 remedy under the Act is if there is a dispute. From what
21 I can see, there's a dispute and they don't acknowledge
22 it, whatever is in dispute the company waives.

23 QUESTION: And, since there isn't any money
24 involved, what happens?

25 MR. KOERNER: It's just a matter of principle.

1 QUESTION: So it's just kind of a -- like they
2 used to say in Michigan, litigation was the winter sport
3 of farmers.

4 MR. KOERNER: Well, of course what happens is
5 that we have a public interest in this, is that, we are
6 appearing in a way, as a private attorney general seeking
7 to enforce a right of consumers under the Act. And the
8 Act provides for costs, attorneys fees and certain out-of-
9 pocket expenses, under, I think it's 15 U.S.C. 1640. And
10 so, it's not -- what's happened is that we have undergone
11 a great deal of time -- trouble --

12 QUESTION: Well let's see, the Court of Appeals
13 reversed the summary judgment?

14 MR. KOERNER: Correct.

15 QUESTION: So now you're supposed to go back to
16 the trial court?

17 MR. KOERNER: Precisely.

18 QUESTION: What happens in the trial court?

19 MR. KOERNER: We decide whether we wish to go
20 forward with a certification of a class, or whether at that
21 point the case should be over. What happened is that
22 there's no dispute that the billings in question were in
23 error, they've been credited out. So the first prong of the
24 relief was voluntarily granted.

25 QUESTION: I know, but won't the District Court

1 have to agree with that proposition?

2 MR. KOERNER: It is stipulated by the parties.
3 I believe those facts are stipulated.

4 QUESTION: What's the -- what stake does your
5 client have in this controversy now that would qualify as
6 Article III standing?

7 MR. KOERNER: He's paid me, we've paid costs as
8 we've gone along, in addition, he's incurred attorneys fees.

9 QUESTION: Mr. Koerner, you filed this as a
10 class action, didn't you?

11 MR. KOERNER: Correct. And also we have, the class
12 has an interest in the outcome of it also, both retrospec-
13 tive and prospective relief.

14 QUESTION: And has the class been certified?

15 MR. KOERNER: No, Your Honor.

16 QUESTION: That was because the District Court
17 ruled against you on the merits?

18 MR. KOERNER: Precisely.

19 QUESTION: So now, I suppose, on remand it would
20 be open to certify a class and recover the ten million
21 dollars or whatever it is you sued for, isn't it?

22 MR. KOERNER: I think there's a statute of limi-
23 tation of \$100,000.

24 QUESTION: Ten thousand dollars. Whatever it is,
25 but if there are other members of the class who have a

1 similar claim, I suppose the case is not moot, is it?

2 MR. KOERNER: Oh no, it's not moot. As a matter
3 of fact, after the decision of the Court of Appeals we filed
4 for certification of the class, and when the mandate was
5 stayed, we suspended the action in the District Court.

6 One of the arguments that American Express makes
7 talks about the legislative history. It's obvious that
8 the Fair Credit Billing Act was part, in a way, in the
9 Truth-in-Lending Act, and that 1603 should not be applicable.
10 The legislative history of the new amendments is very
11 interesting, because what happens is that there were two
12 titles to it, that's--there were three. The first title
13 incorporated the 1974 amendments, one of which was the
14 revocation provision. And there were some technical
15 amendments that were talked about from a year before, from
16 the -- and what happened in the legislative history it's
17 S 2616, they said, "to remove any possible uncertainty
18 relating to the coverage of all credit cards under the
19 Act's credit card amendments Section 135 should be added as
20 follows..." -- and then they exempted from the first three
21 of the '70, but they never ever thought about the '74 Act.
22 And what happened is, we have an act that was, I don't think
23 anybody ever really considered the effect of what they were
24 doing. And I think under those circumstances, they really
25 should have thought more fully about the consequences of

1 whether the business exemption might be contended to be
2 applicable to the '74 amendments. Now, my contention is
3 that the '74 amendment with regard to revocation is like the
4 unauthorized use in that you don't have a credit trans-
5 action and that it's only to credit transactions that the
6 exemption would apply under any circumstances.

7 QUESTION: This was not decided by the District
8 Court or the Court of Appeals, was it?

9 MR. KOERNER: What was? I'm sorry?

10 QUESTION: The inapplicability?

11 MR. KOERNER: The Court of Appeals said it was
12 -- they would not apply it because the man was a consumer.

13 QUESTION: Yes. But had it been a business card.
14 Your present argument as I understand it, is that in any
15 event this particular provision is not applicable.

16 MR. KOERNER: Correct.

17 QUESTION: And that was not decided by the Court
18 of Appeals?

19 MR. KOERNER: No. What they did was, they termed
20 it an obviously difficult question --

21 QUESTION: Correct.

22 MR. KOERNER: -- and ducked it.

23 QUESTION: Right.

24 MR. KOERNER: That is an available alternative
25 grounds for consideration by the Court.

1 QUESTION: Did you urge it in the Court of
2 Appeals?

3 MR. KOERNER: Certainly. That was the main con-
4 tention that we urged and it was only as an alternative
5 that the Fifth Circuit took the idea that under the Louisiana
6 law, the man was a consumer because of the in solido pro-
7 visions, and the agreement between the parties.

8 American Express' argument at the present time
9 is that you should go all the way back to 1965 to try to
10 decipher, give a presumption of the agreement of the parties.
11 But it seems like a total fiction. What happens is that
12 American Express over a period of years, knows that this
13 card has been used for personal purposes because they paid
14 by personal checks. Why should we use that as a manifes-
15 tation of the will of the parties?

16 QUESTION: When you say that American Express
17 knows, how do they know? Because personal checks were sent
18 sometime?

19 MR. KOERNER: Yes.

20 QUESTION: Does American Express have an obli-
21 gation to find out whether the credit was extended for the
22 purchase of perfume in Paris or an airline ticket, or what?

23 MR. KOERNER: No. But I think that what we're
24 doing is we're looking for any objective manifestation of
25 the will of the parties, rather than using the fiction.

1 American Express either has to say you can
2 only use it for business purposes, or we've -- somebody
3 has to say something. Because what happens here is we
4 have an absolute, we have a neutral factual background,
5 except for receipt and acceptance by American Express of
6 personal checks. The -- I think some burden has to be on
7 the card issuer, at the renewal, to make it clear --

8 QUESTION: Mr. Koerner, if you wait till the
9 account is paid, isn't that too late for them to comply
10 with the pre-extension of credit disclosure requirement?
11 If you rely on the fact that they paid the check personally,
12 that's a little late for them to comply with the statute,
13 isn't it?

14 MR. KOERNER: Yes. In a way, that's true. But
15 what happens here is we have a relationship that predates
16 the statute, so at some point or other in the relationship,
17 they had to make a decision on whether to comply or not.

18 QUESTION: You're assuming the computer can
19 differentiate between personal checks and other kinds of
20 checks?

21 MR. KOERNER: Well they -- they don't seem to be
22 able to differentiate the correspondence from the company
23 saying something is wrong. I mean if they have that burden,
24 why shouldn't they be able to differentiate between personal
25 checks and not? What happens here is you have an account

1 where there is the capacity to incur personal obligations.
2 And we have a situation where, as I read, and under the
3 Louisiana law, my father was responsible for every debt
4 on the credit card. I wonder what the collection agent
5 would have done if the company had refused to pay. Would
6 they have put it on my father's --

7 QUESTION: I think what they could do, they
8 could have looked to the contract which said you can
9 negotiate that point. Right?

10 MR. KOERNER: No, there's nothing in the contract
11 that says that.

12 QUESTION: It did so. It said that among
13 the people -- you can negotiate as to who should be
14 responsible.

15 MR. KOERNER: Oh well, that's true. In other
16 words, what happens is --

17 QUESTION: Yes, --

18 MR. KOERNER: -- they would have gone for my
19 father. Absolutely.

20 QUESTION: So they could have done this. Who
21 did they send the bill to?

22 MR. KOERNER: They sent it to the company.

23 QUESTION: I thought so.

24 MR. KOERNER: On the other hand, 15 U.S.C. 1637
25 provides that you're supposed to give individual notice to

1 the consumer. And I allege that that was violated also.
2 That's also, I think, one of the administrative interpre-
3 tations suggest that they should have sent -- using the
4 same language, that they should have sent a notice to the
5 consumer.

6 QUESTION: If you look at the application on page
7 27a of the Joint Appendix at the very bottom there, it's
8 in small print "the undersigned individual and company join
9 in this application", and apparently, is that your father's
10 signature there?

11 MR. KOERNER: That's my uncle's. My father's is
12 on the following page.

13 QUESTION: Your uncle's. Is there any indication
14 in -- either of the -- either the District Court proceedings
15 or the Court of Appeals, what American Express would have
16 done if your uncle or your father had refused to sign those
17 portions of the application?

18 MR. KOERNER: No. That wasn't something that was
19 important at the time. What has happened -- well, the same
20 thing with regard to, I think we have to look to the --to
21 what happened in 1976, and not looking at 1981 amendments
22 and things of this nature. What was the relationship of
23 the parties at the time? They had sent a disclosure state-
24 ment talking about credit revocation. That was one objec-
25 tive manifestation of the will of the parties initiated

1 by American Express. The obverse or converse was the
2 acceptance of personal checks for a number of personal
3 transactions. Under those circumstances, the burden was
4 on American Express. American Express -- most credit card
5 issuers in my experience comply -- whether it's business
6 card or personal card -- they comply with the credit revoca-
7 tion statute under any circumstances because it's good
8 business to do so. It's no more trouble to do so; as a
9 matter of fact, it's easier than as Mr. Greene says -- only
10 ten percent of their cards are business cards -- are issued
11 to corporations. The other 90 percent are personal. It
12 seems to me it would probably be -- much easier.

13 QUESTION: Listen, if --

14 MR. KOERNER: Yes sir?

15 QUESTION: If the Respondent in this case had
16 taken out a personal American Express card and paid for it
17 then he wouldn't have this problem?

18 MR. KOERNER: Precisely.

19 QUESTION: And was the only reason for doing this
20 to save money?

21 MR. KOERNER: No.

22 QUESTION: Well what was the reason?

23 MR. KOERNER: The reason was to avoid the company
24 advancing, or him advancing his own personal funds to the
25 company, rather than use of the credit card.

1 QUESTION: Well, I don't understand that at all.
2 MR. KOERNER: Well okay. What happened --
3 QUESTION: He'd have an American Express credit
4 card, just like he had before?
5 MR. KOERNER: Correct.
6 QUESTION: But he would have paid for it?
7 MR. KOERNER: Correct.
8 QUESTION: Now he's got one for free?
9 MR. KOERNER: That the company pays for.
10 QUESTION: As to him, it's free.
11 MR. KOERNER: True, but he's a principal of the
12 company.
13 QUESTION: Well should he give up something for
14 that?
15 MR. KOERNER: \$20, for free? No, I don't think
16 so. And the reason he shouldn't, is that for this card --
17 every transaction makes American Express money, whether
18 they choose --
19 QUESTION: About the only way for American Express
20 to make money is for you to pay them.
21 MR. KOERNER: Correct. And --
22 QUESTION: Well, and he didn't want to pay, so
23 he goes under the company's, and now he wants to have it
24 both ways.
25 MR. KOERNER: Well what happened is, in 1965 that

1 was a distinction without a difference, because it didn't
2 make any difference whether it was a personal card or
3 business card or whatever.

4 QUESTION: I cannot expect to be bound by 1965.

5 MR. KOERNER: Agreed. I think that that's Amer-
6 ican Express' argument; that that's the time when you look
7 to the objective manifestation of the will of the parties.

8 QUESTION: Well did you bill him in 1975?

9 MR. KOERNER: The company --

10 QUESTION: 1980?

11 MR. KOERNER: The company was billed in 1975.

12 QUESTION: Right. Well, can't we look at that?
13 Instead of looking at '65?

14 MR. KOERNER: That's correct, but at that time --

15 QUESTION: And at that time, he was getting a
16 free ride?

17 MR. KOERNER: Yes.

18 QUESTION: Well why do you say yes? Wasn't the
19 individual liable on the account?

20 MR. KOERNER: Precisely. But --

21 QUESTION: Wasn't he liable for all of the company
22 debts, not only his own, under the agreement? So that's --

23 MR. KOERNER: That's true, that would be the
24 quid pro quo. He would not be --

25 QUESTION: -- not a free ride.

1 MR. KOERNER: -- he would not be getting a free
2 ride therefore, because he swapped the \$20 --

3 QUESTION: He wasn't paying -- so far, as the
4 annual \$20 cost -- did you hear me?

5 MR. KOERNER: Yes sir.

6 QUESTION: Was that a free ride or not?

7 MR. KOERNER: That was. But the --

8 QUESTION: He didn't pay the \$20, right?

9 MR. KOERNER: He did not pay the \$20, but --

10 QUESTION: Who paid the \$20?

11 MR. KOERNER: The company. Of which he was vice
12 president. But on the other hand, he swapped unlimited
13 liability for any use by the company.

14 QUESTION: Wouldn't he have had that if he'd have
15 had his own card?

16 MR. KOERNER: Only for his own use. But what
17 happens if my cousin Ralph decides to run off with --

18 QUESTION: I can't get involved with your cousin
19 and your uncle. I'm talking about this case here.

20 MR. KOERNER: Well American Express, by the terms
21 of the application, invited him to become liable for any
22 use by other people that they issued the card to. They
23 issued four cards to the Koerner Company and its employees.
24 And so my father, under Louisiana law, and the terms of
25 the application, was stuck if American Express chose to do

1 so, for what my cousin Ralph did, my Uncle John, anyone
2 else --

3 QUESTION: Well that's a family affair, let the
4 family work it out. But don't bother us with it.

5 QUESTION: Well that's only if they use an
6 American Express credit card. It isn't as if some deal
7 not involving a credit card arose.

8 MR. KOERNER: Precisely. This is only American
9 Express credit card. In other words, what happened is that
10 American Express wished to get the personal liability of each
11 of the cardholders for all of the debts on all of the cards
12 of the whole of the company. And that is a mighty tough
13 bargain for not having to pay \$20. If there are no more
14 questions, Your Honors? Thank you very much.

15 MR. CHIEF JUSTICE BURGER: Very well. Do you
16 have anything further, Mr. Greene?

17 ORAL REBUTTAL ARGUMENT OF RONALD J. GREENE, ESQ.,
18 ON BEHALF OF THE PETITIONER

19 MR. GREENE: Just a few minor points. First of
20 all, this is not from American Express' standpoint, an aca-
21 demic dispute. We were sued for half a million dollars.
22 The complaint talked about 10 million or something like
23 that, but --

24 QUESTION: What happens if you lose, we affirm?
25 What goes on in the District Court?

1 MR. GREENE: It will go back to the District Court
2 and the District Court will have to decide whether to certi-
3 fy the case as a class action. If it is certified as a class
4 action, then under Section 130 of the Truth-in-Lending Act
5 there are statutory damages of \$500,000 for the class;
6 \$500,000 or one percent of the net worth of the creditor,
7 whichever is less.

8 QUESTION: And suppose the Court refuses to
9 certify the class, then what?

10 MR. GREENE: Then it would go forward as an
11 individual action, as to Mr. Koerner, and there are statu-
12 tory damages there of \$100.

13 QUESTION: How about the damages for humiliation,
14 ripping your card up, and all that sort of thing? Is that
15 independently, or is that --

16 MR. GREENE: Well, there would be arguments as
17 to whether the \$100 statutory damages --

18 QUESTION: Was all?

19 MR. GREENE: -- would preclude such other damages.
20 So we were in this case, defending it, not because we didn't
21 want to apologize to somebody, but because we were sued for
22 a half a million dollars.

23 Now, the second --

24 QUESTION: But you didn't want to apologize?

25 MR. GREENE: Well, I don't know. On that point,

1 Mr. Koerner said that it was undisputed that we had vio-
2 lated the law. That's not entirely correct. This case
3 arises on a motion for summary judgment, and I think the
4 Court has to assume that if the Act applies it was violated.
5 But if it were remanded for trial, Mr. Koerner would have
6 to put on evidence that would show that we did in fact
7 violate the law, that there was a dispute, that it was
8 properly sent in, there's an extremely technical definition
9 of what has to be a proper written notification of a billing
10 error and whether it was sent in within the statutory --

11 QUESTION: Didn't you -- you answered, I suppose,
12 before the summary judgment motion?

13 MR. GREENE: I believe we did. We moved to dismiss.

14 QUESTION: Did you deny the fact?

15 MR. GREENE: I'll check that.

16 QUESTION: Well that's all right. I just wanted
17 to --

18 MR. GREENE: It's in my records.

19 QUESTION: I would think he alleged the facts and
20 that you either denied them or admitted them?

21 MR. GREENE: We certainly filed a motion to dismiss,
22 on summary judgment, you have to assume the facts.

23 QUESTION: Mr. Greene, let me just ask you a
24 question about -- I think Judge Wisdom's theory. Why isn't
25 it perfectly clear that the only consideration for the

1 guarantee -- it isn't a guarantee -- but the joint
2 responsibility for the account on the part of the individ-
3 ual, was that the individual was going to get individual
4 credit for consumer purposes, for non-business purposes.

5 MR. GREENE: That's not --

6 QUESTION: He's not a surety, as I understand
7 your --

8 MR. GREENE: That's not clear at all. I think the
9 basic problem with Judge Wisdom's contention is that he
10 seems to equate individual liability with the fact that you
11 have a consumer credit transaction covered by the Act.

12 QUESTION: Well what could the individual possibly
13 be doing for which he would accept individual liability
14 that --

15 MR. GREENE: Oh, Mr. Justice, that happens all
16 the time. In all -- as pointed out in our brief, that it's
17 a common practice for creditors to require individuals,
18 especially in cases of small businesses, new businesses,
19 unincorporated businesses, to assume liability for business
20 debts.

21 QUESTION: But that's in the nature of a surety
22 relationship.

23 MR. GREENE: Well, it could be a joint liability.
24 That happens as well. Oftentimes in the case of a new busi-
25 ness with --

1 QUESTION: Don't you have this agreement, say
2 somebody like U.S. Steel -- a very large corporation, they
3 have cards for literally dozens of people, I suppose, do
4 they assume individual liability too?

5 MR. GREENE: Yes. We made, we have some customers--

6 QUESTION: Then your analogy wouldn't apply there.
7 It's not because you're concerned about the credit investi-
8 gations.

9 MR. GREENE: No, but it might well with the
10 Koerner Company. Certainly with U.S. Steel, the purpose
11 for the individual liability is somewhat different, the use
12 purpose of control of individual employees' expenditures and
13 the allocation of liability as among the card issuer --
14 card issuing company and the employee, --

15 QUESTION: It seems to me that the most frequent
16 situation where you have an individual on a company card is
17 that everybody expects him to use it for personal purposes.

18 MR. GREENE: Well, you might assume that, but
19 in this case, we have a contract that says that it's a
20 business account, and the record doesn't reflect that.

21 Thank you, Your Honor.

22 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.
23 The case is submitted.

24 (Whereupon, at 11:09 o'clock a.m. the case in the
25 above matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the
attached pages represent an accurate transcript of electronic
sound recording of the oral argument before the Supreme Court
of the United States in the matter of:

No. 80-202

AMERICAN EXPRESS COMPANY,

Petitioner,

v.

LOUIS R. KOERNER, SR.

and that these pages constitute the original transcript of the
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