Supreme Court of the United States  
Washington, D.C. 20543

June 4, 1970


Dear Bill:

I contemplate dissenting in the above and will write briefly. Justice Marshall and I voted to affirm and it may be that he will be content as I probably will be with a recital that he and I would affirm.

W. E. B.

Mr. Justice Brennan

cc: The Conference
Supreme Court of the United States
Washington, D.C. 20543

June 25, 1970


Dear John:

I concur in your circulation of June 23.

Regards,

Mr. Justice Harlan

cc: The Conference
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

June 3, 1970

Dear Bill,


I am happy to join you.

Sincerely,

[Signature]

H. L. B.

Mr. Justice Brennan

cc: Members of the Conference
MR. JUSTICE BRENNAN delivered the opinion of the Court.

This direct appeal under the Expediting Act, 15 U. S. C. § 29, is taken by the United States from a judgment of the District Court of New Jersey dismissing, after full hearing, the Government's complaint seeking to enjoin as a violation of § 7 of the Clayton Act, 16 U. S. C. § 18, the proposed merger of appellees, Phillipsburg National Bank and Trust Co. (PNB) and the Second National Bank of Phillipsburg (SNB), both located in Phillipsburg, New Jersey. The Comptroller of the Currency, also an appellee here, approved the merger in December 1967 and intervened in this action to defend it, as he was authorized to do by the Bank Merger Act of 1966, 12 U. S. C. § 1828 (c)(7)(D). The Bank Merger Act

Section 7, as amended by the 1950 Celler-Kefauver Antimerger Act, provides in pertinent part:

“No corporation engaged in commerce shall acquire ... the whole or any part of the stock or other share capital ... of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition ... .”

The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (c)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.
To: The Chief Justice
   Mr. Justice Black
   Mr. Justice Douglas
   Mr. Justice Brennan
   Mr. Justice Stewart
   Mr. Justice White
   Mr. Justice Marshall
   Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 1093.—OCTOBER TERM, 1969

From: Harlan, J.

Circulated: JUN 23 1970

United States, Appellant,

v.

Phillipsburg National Bank
and Trust Company et al.

On Appeal From the
United States District Court for the District
of New Jersey.

[June —, 1970]

Mr. JUSTICE HARLAN, concurring in part and dissenting in part.

My first reaction to this case was wonderment that the Department of Justice had bothered to sue. How could that agency of government, I asked myself, be efficiently allocating its own scarce resources if it chose to attack a merger between two banks as small as those involved in this case? When compared with any of the 10 prior cases in which a bank merger was contested, the total assets of the bank that would result from this merger are minuscule. Moreover, measured by trust

1. The appendix contains the following table showing the total assets of the resulting banks in the contested bank merger cases initiated up to the time of suit in this case.

CONTESTED SECTION 7 BANK MERGER CASES:
ASSETS AND MARKET SHARES OF RESULTING BANKS

<table>
<thead>
<tr>
<th>Case</th>
<th>Assets (in millions)</th>
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</thead>
<tbody>
<tr>
<td>1. Manufacturers Hanover</td>
<td>36,001.8</td>
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<tr>
<td>2. Continental Illinois</td>
<td>3,248.3</td>
</tr>
<tr>
<td>3. Crocker-Citizens</td>
<td>3,217.4</td>
</tr>
<tr>
<td>4. California Bank—First Western</td>
<td>2,421.2</td>
</tr>
<tr>
<td>5. Philadelphia National Bank</td>
<td>1,805.3</td>
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<tr>
<td>6. Provident—Central Penn</td>
<td>1,069.1</td>
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<td>7. First City—Southern National (Houston)</td>
<td>1,042.9</td>
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<tr>
<td>9. Third National—Nashville Bank &amp; Trust</td>
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<td>389.7</td>
</tr>
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<td>11. Phillipsburg National—Second National</td>
<td>41.1</td>
</tr>
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To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 1093.—OCTOBER TERM, 1969

United States, Appellant,  

v.  

Phillipsburg National Bank and Trust Company et al.  

[June —, 1970]

Mr. Justice Harlan, with whom the Chief Justice joins, concurring in part and dissenting in part.

My first reaction to this case, from the vantage point of what is depicted in the record and briefs, was wonderment that the Department of Justice had bothered to sue. How could that agency of government, I asked myself, be efficiently allocating its own scarce resources if it chose to attack a merger between two banks as small as those involved in this case? When compared with any of the 10 prior cases in which a bank merger was contested, the total assets of the bank that would result from this merger are minuscule. ¹ Moreover, measured by trust

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This direct appeal under the Expediting Act, 15 U. S. C. § 29, is taken by the United States from a judgment of the District Court of New Jersey dismissing, after full hearing, the Government's complaint seeking to enjoin as a violation of § 7 of the Clayton Act, 16 U. S. C. § 18,1 the proposed merger of appellees, Phillipsburg National Bank and Trust Co. (PNB) and the Second National Bank of Phillipsburg (SNB), both located in Phillipsburg, New Jersey. The Comptroller of the Currency, also an appellee here, approved the merger in December 1967 and intervened in this action to defend it, as he was authorized to do by the Bank Merger Act of 1966, 12 U. S. C. § 1828 (c)(7)(D).2 The Bank Merger Act

1 Section 7, as amended by the 1950 Celler-Kefauver Antimerger Act, provides in pertinent part:

"No corporation engaged in commerce shall acquire ... the whole or any part of the stock or other share capital ... of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition ... ."

2 The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (c)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.
SUPREME COURT OF THE UNITED STATES

No. 1093.—October Term, 1969


On Appeal From the United States District Court for the District of New Jersey.

[June —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This direct appeal under the Expediting Act, 15 U. S. C. § 29, is taken by the United States from a judgment of the District Court of New Jersey dismissing, after full hearing, the Government's complaint seeking to enjoin as a violation of § 7 of the Clayton Act, 15 U. S. C. § 18, the proposed merger of appellees, Phillipsburg National Bank and Trust Co. (PNB) and the Second National Bank of Phillipsburg (SNB), both located in Phillipsburg, New Jersey. The Comptroller of the Currency, also an appellee here, approved the merger in December 1967 and intervened in this action to defend it, as he was authorized to do by the Bank Merger Act of 1966, 12 U. S. C. § 1828 (c)(7)(D). The Bank Merger Act re-

1Section 7, as amended by the 1950 Celler-Kefauver Antimerger Act, provides in pertinent part: "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly."

2The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (e)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.

[June —, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

This direct appeal under the Expediting Act, 15 U. S. C. § 29, is taken by the United States from a judgment of the District Court of New Jersey dismissing, after full hearing, the Government's complaint seeking to enjoin as a violation of § 7 of the Clayton Act, 15 U. S. C. § 18,1 the proposed merger of appellees, Phillipsburg National Bank and Trust Co. (PNB) and the Second National Bank of Phillipsburg (SNB), both located in Phillipsburg, New Jersey. The Comptroller of the Currency, also an appellee here, approved the merger in December 1967 and intervened in this action to defend it, as he was authorized to do by the Bank Merger Act of 1966, 12 U. S. C. § 1828 (c)(7)(D).2 The Bank Merger Act re-

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2 The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (c)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.
May 28, 1970

No. 1093 - U.S. v. Phillipsburg National Bank

Dear Bill,

I should appreciate your indicating at the foot of your opinion that I did not participate in the decision of this case.

Sincerely yours,

[Signature]

Mr. Justice Brennan

Copies to the Conference
June 1, 1970


Dear Bill:

Please join me.

Sincerely,

[Signature]

Mr. Justice Brennan

cc: The Conference
Supreme Court of the United States
Washington, D.C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 26, 1970

Re: No. 1093 - U.S. v. Phillipsburg Bank

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference