

equipment has served to give Burroughs a "lock-in" advantage over all other competitors. Therefore, Sperry argues although the City will be seeking new bids for its computer facilities when the settlement agreement expires in November 1982, no other computer company will be able to successfully bid against Burroughs.

This court is aware that the "incumbent" will always have a slight advantage over its competitors but in the present situation Burroughs' advantage may be unfair. For example, at oral argument the City stated that there may not be sufficient time between now and November 1982 for any company but Burroughs to install data processing equipment. Additionally, if the City does not require all bidders to provide a state of the art data base, Burroughs will not have the additional cost of conversion that its competitors will suffer.

We remand this case to the district court for a review of the City's forthcoming bid specifications to determine whether there is an unfair advantage given to Burroughs, above the built-in advantage Burroughs has by reason of being the "incumbent."

Affirmed and remanded with additional instructions to the district court to review the City's bid specifications.



John L. LEWIS, Plaintiff/Appellant,

v.

**UNITED STATES of America,
Defendant/Appellee.**

No. 80-5905.

United States Court of Appeals,
Ninth Circuit.

Submitted March 2, 1982.

Decided April 19, 1982.

As Amended June 24, 1982.

Plaintiff, who was injured by vehicle owned and operated by a federal reserve

bank, brought action alleging jurisdiction under the Federal Tort Claims Act. The United States District Court for the Central District of California, David W. Williams, J., dismissed holding that federal reserve bank was not a federal agency within meaning of Act and that the court therefore lacked subject-matter jurisdiction. Appeal was taken. The Court of Appeals, Poole, Circuit Judge, held that federal reserve banks are not federal instrumentalities for purposes of the Act, but are independent privately owned and locally controlled corporations.

Affirmed.

1. United States ⇐78(4)

There are no sharp criteria for determining whether an entity is a federal agency within meaning of the Federal Tort Claims Act, but critical factor is existence of federal government control over "detailed physical performance" and "day to day operation" of an entity. 28 U.S.C.A. §§ 1346(b), 2671 et seq.

2. United States ⇐78(4)

Federal reserve banks are not federal instrumentalities for purposes of a Federal Tort Claims Act, but are independent, privately owned and locally controlled corporations in light of fact that direct supervision and control of each bank is exercised by board of directors, federal reserve banks, though heavily regulated, are locally controlled by their member banks, banks are listed neither as "wholly owned" government corporations nor as "mixed ownership" corporations; federal reserve banks receive no appropriated funds from Congress and the banks are empowered to sue and be sued in their own names. 28 U.S.C.A. §§ 1346(b), 2671 et seq.; Federal Reserve Act, §§ 4, 10(a, b), 13, 13a, 13b, 14, 14 (a-g), 16, 12 U.S.C.A. §§ 301, 341-360; 12 U.S.C.A. § 361; Government Corporation Control Act, §§ 101, 201, 31 U.S.C.A. §§ 846, 856.

3. United States ⇐78(4)

Under the Federal Tort Claims Act, federal liability is narrowly based on tradi-