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Searches and Seizures - Banks and Banking - Witnesses - Right to Privacy; California Bankers Association v. Schultz

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CONSTITUTIONAL LAW—SEARCHES AND SEIZURES—BANKS AND BANKING—WITNESSES—RIGHT TO PRIVACY

California Bankers Association v. Schultz, 94 S.Ct. 1494 (1974).

FOLLOWING EXTENSIVE HEARINGS, Congress enacted what has become known as the Bank Secrecy Act of 1970.[1] In *California Bankers Association v. Schultz*,[2] certain parts of the Act were subjected to constitutional attack by various plaintiffs, including individual bank customers, a national bank, a bankers association, and the American Civil Liberties Union,[3] representing itself and its bank customer members. The plaintiffs' challenges rested on the first, fourth, fifth, ninth, tenth, and fourteenth amendments.[4]

The Act, as material here, is divided into three main areas: (1) financial recordkeeping,[5] (2) reports of domestic currency transactions,[6] and (3) reports of exports and imports of monetary instruments.[7] The Act is not self-executing—rather it requires the Secretary of the Treasury[8] to issue regulations to implement it.[9] The Treasury Regulations issued pursuant to the Act[10] were also attacked.

Justice Rehnquist, speaking for the majority, stated that the Act was drafted to help solve two major problems in the area of regulatory, tax, and criminal laws. The first problem was the impairment in enforceability of tax, criminal, and regulatory laws caused by a lack of adequate financial records recorded and stored by financial institutions.[11] The second problem dealt with the use of foreign financial institutions by United States citizens engaged in "white collar" crime.[12] The technique

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[1] 12 U.S.C. §§ 1730d, 1829b, 1951-59 (1970); 31 U.S.C. §§ 1051-1122 (1970) (enacted as Act of Oct. 26, 1970, PUB. L. No. 91-508, 84 STAT. 1114) [hereinafter cited as *Act*].

[2] 94 S.Ct. 1494 (1974).

[3] Hereinafter cited as *ACLU*.

[4] 94 S.Ct. at 1507.

[5] 12 U.S.C. §§ 1730d, 1829b, 1951-59 (1970); 31 U.S.C. §§ 1051-1122 (1970).

[6] 31 U.S.C. §§ 1081-83 (1970).

[7] 31 U.S.C. §§ 1101-05 (1970).

[8] Hereinafter cited as *Secretary*.

[9] 12 U.S.C. §§ 1730d, 1928b, 1952-53 (1970); 31 U.S.C. § 1053 (1970).

[10] 31 C.F.R. § 103 (1973).

[11] 94 S.Ct. at 1500 & n. 1.

[12] *Id.*

adopted by Congress and implemented by Treasury Regulations to solve these problems was to require recordkeeping and reporting by financial institutions and also affected individuals.[13]

The Secretary, in responding to the authority granted him by Congress, issued a set of regulations,[14] which call for banks to keep records of (1) customer identities, (2) checks and similar instruments in excess of $100, subject to certain exemptions, and (3) certain other records.[15] Financial institutions, including banks, are required to record credit extensions in excess of $5,000, and to record each advice, request, or instruction involving the transfer to a person, account, or place outside the United States of $10,000 or more.[16] The Treasury Regulations also mandate the making of certain reports concerning currency transactions. Persons receiving monetary instruments sent from outside the United States or sending monetary instruments outside the United States, whose value exceed $5,000, are required to file a report with Custom officials.[17] Financial institutions must file reports of domestic transactions involving currency of $10,000 or more with Internal Revenue.[18] In addition, a person subject to United States jurisdiction must report any interest in a foreign financial account on his income tax return.[19] It is instructive to note at this point that the required *reports* and the information therein are available to "... any other department or agency of the United States,"[20] upon compliance with certain procedural provisions. However, access to the required *records* is allowed only upon the meeting of existing legal process.[21]

This litigation was initiated in an attempt to enjoin enforcement of certain provisions of both the Act and the implementing Regulations. A three-judge district court upheld the recordkeeping provisions and the reporting provisions relating to foreign currency transactions.[22] However, the Court held the domestic reporting provisions of the Act unconstitutional since they "... unreasonably invade the right of privacy protected by the Bill of Rights, particularly the fourth amendment provision protecting 'the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.' "[23] The

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[13] 31 C.F.R. § 103 (1973).
[14] *Id.*
[15] 31 C.F.R. § 103.34 (1973).
[16] 31 C.F.R. § 103.33 (1973).
[17] 31 C.F.R. §§ 103.23, 103.25(b)-(c) (1973).
[18] 31 C.F.R. §§ 103.22, 103.25(a) (1973).
[19] 31 C.F.R. § 103.24 (1973).
[20] 31 C.F.R. § 103.43 (1973).
[21] 31 C.F.R. § 103.51 (1973).
[22] Stark v. Connally, 347 F. Supp. 1242, 1244-45 (N.D. Cal. 1972).
[23] *Id.* at 1251.

district court looked not at the narrowly drawn regulations, but rather considered the broad authority granted by the Act itself.[24] On appeal, the Supreme Court affirmed the lower court opinion insofar as it upheld the recordkeeping and reporting provisions relating to foreign currency transactions, but reversed insofar as the opinion struck down the domestic reporting sections.

The bank plaintiffs argued that the recordkeeping provisions imposed by the Regulations violate due process "... by imposing unreasonable burdens upon them."[25] Justice Rehnquist cited *United States v. Darby*,[26] and *Shapiro v. United States*,[27] for the proposition that Congress may require recordkeeping as an aid in enforcing a valid law.[28] The bank plaintiffs insisted *Darby* and *Shapiro* were inapplicable since the recordkeeping provisions involved were not in furtherance of any substantive regulations directed at the banks themselves, but rather were designed to enforce laws affecting its customers.[29] Therefore, they argued, the Act places an unreasonable burden on banks. The Court rejected this argument saying that "provisions requiring reporting or recordkeeping by the paying institution, rather than the individual who receives the payment, are by no means unique."[30] Supporting this contention with several examples from the Internal Revenue Code,[31] the Court then added that banks are not neutrals in negotiable instruments, but rather are parties to them, in fact, the "... most easily identifiable party to the instrument."[32]

Two additional arguments advanced by the bank plaintiffs relating to the recordkeeping requirements were that they constituted a cost burden to the banks and "... undercut a depositor's right to effectively challenge a third-party summons issued by the Internal Revenue Service."[33] The cost burden argument was rejected since the burden is simply a condition imposed by Congress on banks insured by the federal government.[34] The third-party summons argument was dismissed as being premature.[35]

Several plaintiffs, including a national bank, various individuals, and the ACLU, argued that since the main thrust of the Act is to

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[24] *Id.*
[25] 94 S.Ct. at 1509.
[26] 312 U.S. 100 (1941).
[27] 335 U.S. 1 (1948).
[28] 94 S.Ct. at 1510.
[29] *Id.*
[30] *Id.*
[31] INT. REV. CODE OF 1954, §§ 6041(a), 6042, 6044, 6045, 6049.
[32] 94 S.Ct. at 1511.
[33] *Id.* at 1512.
[34] *Id.* The issue of uninsured banks was not considered since no bank plaintiffs alleged to be uninsured.
[35] 94 S.Ct. at 1512.

enforce criminal statutes, its constitutionality must be measured by criminal law standards. Specifically, they charged violations of the fourth, fifth, and first amendments.[36]

Relying on the fourth amendment, plaintiffs urged the recordkeeping provisions require banks to unconstitutionally seize records of their depositors, while acting as an agent of the government.[37] The Court's answer to this attack was twofold: first, that the required records are of such a nature that the bank itself is a party thereto; and second, that these records are available to the Government only by normal legal process.[38]

Plaintiffs also asserted a fifth amendment privilege against self-incrimination. The Court's response to this argument was that the banks, as incorporated organizations, have no fifth amendment rights with respect to self-incrimination.[39] In regard to the individual depositors, the Court declared that "a party incriminated by evidence produced by a third party sustains no violation of his own fifth amendment rights."[40]

The ACLU also asserted a violation of the first amendment right of association. Their position was that the recordkeeping provisions could be manipulated by the Government to obtain a list of its supporters. Although the Court conceded to the ACLU that it had standing to assert its members' constitutional right of association, it held that such right is not absolute where there is a compelling governmental interest. Since the right is not absolute and since no attempted discovery of the identity of members was alleged, the ACLU's claim was rejected as being premature.[41]

The reporting provisions of the Act are divided into two general areas: domestic and foreign. The Regulations require reports by financial institutions of domestic currency transactions involving $10,000 or more, subject to certain exemptions.[42] Regulations dealing with foreign currency transactions require reports by individuals of the importation or exportation of monetary instruments with a value of $5,000 or more.[43] Reports are also required of any interest in a foreign financial institution.[44]

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[36] *Id.* at 1513.
[37] *Id.*
[38] *Id.* at 1513-14. 31 C.F.R. § 103.51 (1973).
[39] 94 S.Ct. at 1514. *E.g.*, United States v. White, 322 U.S. 694, 699 (1944); Wilson v. United States, 221 U.S. 361, 382-84 (1911); Hale v. Henkel, 201 U.S. 43, 74-75 (1906).
[40] 94 S.Ct. at 1514. *E.g.*, Couch v. United States, 409 U.S. 322, 328 (1973) (client-accountant); Johnson v. United States, 228 U.S. 457, 458 (1913) (bankrupt-trustee).
[41] 94 S.Ct. at 1515.
[42] 31 C.F.R. § 103.22 (1973).
[43] 31 C.F.R. § 103.23 (1973).
[44] 31 C.F.R. § 103.24 (1973).

Citing *Boyd v. United States*[45] and *Stanford v. Texas*,[46] the plaintiffs claimed that the foreign reporting requirements infringed on their fourth amendment rights. The *Boyd* case involved a government attempt to enforce revenue laws by using a statute requiring the defendant or claimant to produce records. If the records were not produced, government allegations vis-à-vis the records were considered to be confessed. This discovery type statute was held to be an unreasonable search and seizure in violation of the fourth amendment.[47] Plaintiffs relied on the *Boyd* decision for the proposition that the coerced reporting section of the Act is an unreasonable search and seizure. Justice Rehnquist, however, rejected this argument and for support also cited *Boyd:* ". . . entries . . . in books required by law to be kept for their [revenue officials] inspection, are necessarily excepted out of the category of unreasonable searches and seizures."[48]

Stanford v. Texas invalidated a search warrant authorizing a search of Stanford's home for "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas,"[49] as being an unconstitutional general warrant. Plaintiff's contention was that the required reports of foreign transactions are so indiscriminate as to be an unconstitutional general warrant. The Court, in disallowing this contention, said:

> The reports of foreign financial transactions required by the regulations must contain information as to a relatively limited group of financial transactions in foreign commerce, and are reasonably related to the statutory purpose of assisting in the enforcement of the laws of the United States.[50]

The Court also placed emphasis on the foreign commerce nature of the transactions.

Both the bank and depositor plaintiffs alleged that the Act and Regulations require unconstitutional self-incrimination in the foreign currency reporting provisions. The bank plaintiffs' claims were disallowed based on the unavailability of a fifth amendment privilege against self-incrimination to a corporation.[51] The depositor plaintiffs' claims (and also the bank plaintiffs' right to assert their customers' privilege) were dismissed as being premature since none of the depositor plaintiffs made any specific allegations of possible incrimination.[52]

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[45] 116 U.S. 616 (1886).
[46] 379 U.S. 476 (1965).
[47] 116 U.S. at 620.
[48] 94 S.Ct. at 1517, *quoting* 116 U.S. at 623-24.
[49] 94 S.Ct. at 1518, *quoting* 379 U.S. at 478-79.
[50] 94 S.Ct. at 1518.
[51] *Id.* at 1522.
[52] *Id.* at 1523.

Plaintiffs also challenged the domestic reporting provisions of the Act and the Regulations implementing them. As mentioned above, the district court held the domestic reporting provisions of the Act unconstitutional.[53] However, the Supreme Court viewed the issue, not in terms of the broadly written Act, but rather in terms of the Regulations themselves.[54] The Act authorizes the Secretary to require reports by both the individual parties and financial institutions involved[55] and to specify which currency transactions should be reported.[56] The Secretary, in his Regulations, used only a portion of the granted authority and required reports only by financial institutions of currency transactions exceeding $10,000.[57] Viewing the situation in light of the reports actually required, the Supreme Court proceeded to answer the asserted constitutional violations.

The bank plaintiffs' first challenge to the domestic reporting regulations was based on the fourth amendment. The Court's response rested in large part on some broad language in *United States v. Morton Salt Co.*[58] That case involved Morton's resistance to filing detailed reports concerning its compliance with a Federal Trade Commission cease and desist order. Justice Jackson, speaking for the *Morton* Court, declared that while a corporation does have some privacy rights "... corporations can claim no equality with individuals in the enjoyment of a right to privacy.... [L]aw-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest."[59] Based on the above reasoning and restricted view of the Regulations involved, the Supreme Court decided that banks are parties to the transactions and that the reporting requirements are not unreasonable.[60]

Depositor-plaintiffs also attacked the domestic reporting requirements basing their challenge on the fourth amendment. This issue was dismissed since none of the depositor plaintiffs alleged that "... they were engaged in the type of $10,000 domestic currency transactions which would necessitate that their bank report it to the Government."[61] Absent such allegations, the depositor plaintiffs lacked standing.

Bank and depositor plaintiffs also asserted that the domestic reporting provisions violated the fifth amendment privilege against

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53 Stark v. Connally, 347 F. Supp. 1242 (N.D. Cal. 1972).
54 94 S.Ct. at 1519.
55 31 U.S.C. § 1082 (1970).
56 31 U.S.C. § 1081 (1970).
57 31 C.F.R. § 103.22 (1973).
58 338 U.S. 632 (1950).
59 *Id.* at 652.
60 94 S.Ct. at 1520.
61 *Id.*

self-incrimination.[62] However, this assertion was rejected on the same basis as the fifth amendment challenge to the foreign reporting regulations; namely, bank plaintiffs, as corporations, do not have a privilege against self-incrimination, and depositor plaintiffs' claims were premature.[63]

As discussed above, in the section on recordkeeping, the ACLU claimed a violation of the constitutional right of association of its members. Similarly, the ACLU claimed an invasion of its members' right of association with respect to the reporting regulations. Justice Rehnquist's response was that since the ACLU had not alleged that any of its transactions required a report to be filed, there was not a concrete controversy presented to the Court.[64]

The actual decision was by a 6-3 margin. Justice Powell, joined by Justice Blackmun, filed a concurring opinion in which he cautioned against "[A] significant extension of the regulation's [domestic] reporting requirements."[65] Justices Douglas, Brennan, and Marshall filed separate dissenting opinions. Justice Douglas' opinion focused on the invasion of privacy which the Act allows. While using different approaches to the recordkeeping and reporting provisions, the common thread in his argument was that the Act allows the Government access to a "... citizen's activities, opinions, and beliefs"[66] via his checking account. Justice Brennan's dissent was based on what he viewed as an unconstitutional delegation of congressional authority to the Secretary of the Treasury.[67] Justice Marshall, in his opinion, viewed the recordkeeping provisions as an unlawful search and seizure, referring to the practice of informal access by Government agencies to bank records.[68] A further point raised by Marshall was that the recordkeeping itself is the seizure and not the later Government scrutiny of the individual's account.[69] The Justice also agreed with the ACLU that the existence of a list of ACLU contributors "... surely will chill the exercise of first amendment rights of association on the part of those who wish to have their contributions remain anonymous."[70]

It is clear that the Act and the Regulations provide the government with information that has "... a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings."[71] However, it is also clear

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[62] *Id.* at 1522.
[63] *Id.* at 1522-24.
[64] *Id.* at 1523-24.
[65] 94 S.Ct. at 1526 (Powell, J., concurring).
[66] 94 S.Ct. at 1531 (Douglas, J., dissenting).
[67] 94 S.Ct. at 1533 (Brennan, J., dissenting).
[68] 94 S.Ct. at 1534-35 (Marshall, J., dissenting).
[69] *Id.* at 1535.
[70] *Id.*
[71] 31 U.S.C. § 1051 (1970).

that the required reports and records constitute a governmental intrusion into an individual's private affairs. The balancing of these interests—the Government's need to know versus the individual's privacy rights—presents an important constitutional issue. This analysis will not attempt to answer this broad issue but will be confined to a discussion of the particular impact of the recordkeeping regulations challenged in the case, as it relates to the delicate balance between the citizen and his Government.[72]

The *California Bankers Association v. Schultz* decision represents an erosion of the individual's right to privacy. The Act allows the government to use proxies—financial institutions—in order to obtain information, not on suspected individuals, but rather on every citizen who writes checks in excess of $100. The estimated number of checks required to be copied is staggering—20 to 30 billion.[73]

Justice Douglas pointed out that "[H]eretofore this Nation has confined compulsory recordkeeping to that required to monitor either (1) the recordkeeper, or (2) his business."[74] This Act does not have as its primary purpose the monitoring of either. Rather, it requires the recordkeeper to act as the Government's agent in monitoring the recordkeeper's customers and clients. Justice Rehnquist's response to this argument is that certain Internal Revenue Code sections[75] require the "... paying institution, rather than the individual who receives the payment,"[76] to either maintain records or to submit reports. However, this answer is inadequate in two important aspects. First, the Internal Revenue Code provisions cited are all designed to help enforce substantive tax legislation. Second, the bank is only technically the "paying institution" in reference to a negotiable instrument while the Internal Revenue Code sections deal with institutions who are in fact the payees and not merely a conduit of payment.[77] Justice Rehnquist, in trying to answer this latter objection, stated, "The bank is a party to any negotiable instrument drawn upon it by a depositor."[78] However, he did concede that the bank is not a party

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[72] The reportmaking requirements are not discussed here since the Supreme Court did not determine their constitutionality.

[73] 94 S.Ct. at 1528 (Douglas, J., dissenting).

[74] *Id.* at 1529. *See also* 18 U.S.C. § 923(g) (1970) (Licensed firearms dealer required to maintain records of firearms transactions); INT. REV. CODE OF 1954, § 4403 (Persons engaged in business of accepting wagers required to keep daily records).

[75] 94 S.Ct. at 1509 n. 19, 1510.

[76] *Id.* at 1510.

[77] INT. REV. CODE OF 1954, § 6001. "Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records... as the Secretary or his delegate may from time to time prescribe." This section clearly puts the burden of information gathering on someone involved in the background of the transaction.

[78] 94 S.Ct. at 1511.

to the background of the transaction.[79] Taking a practical look at the Act, it is apparent the Government is not interested in the transaction itself, but its real inquiry is into the background of the financial transaction—a background which the individuals may seek to keep private.[80] The figures on a check ledger mean nothing unless there are also the names of the drawer and payee to the instruments. It is by use of this background information that the Government conducts its investigation.

The majority's reliance on *Shapiro v. United States*[81] and *United States v. Darby*[82] is also questionable. *Shapiro* involved a fruit and produce wholesaler subject to the Emergency Price Control Act of 1942,[83] while *Darby* concerned an employer subject to the Fair Labor Standards Act of 1938.[84] Both cases dealt with recordkeeping and reportmaking requirements imposed either on the individual involved or his business. But, in the case at bar, the Act and Regulations require financial institutions to maintain records not for use in regulating their business but rather in monitoring their customers' and clients' activities. This is a significant departure from prior legislation.

Plaintiffs also urged the Act violated their fourth amendment right against unreasonable search and seizure. Rehnquist rejected this approach by saying the bank was a party to the instruments involved. But, as discussed above, while the bank is technically a party to the transaction it is not privy to the information the government actually seeks—the transaction's background. Additionally, Rehnquist stated that the individuals suffer no infringement of fourth amendment rights since the records are available to governmental scrutiny only by existing legal process.[85] His position is that "the mere maintenance of the records by the banks under the compulsion of the regulations invaded no fourth amendment right of any depositor."[86] In other words, Rehnquist is saying that there is no search and seizure when the records are made. Justice Marshall's dissent takes a more pragmatic view of the situation. He said that once the required records are made "[T]he seizure has already occurred."[87] What the government in effect is doing is requiring financial institutions to compile data of private individuals' monetary dealings without probable cause.

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[79] *Id. See* UNIFORM COMMERCIAL CODE § 3-802. (This section deals with the effect of a negotiable instrument on the underlying obligation); WHITE & SUMMERS, UNIFORM COMMERCIAL CODE § 13-20 (1972).

[80] *See* Katz v. United States, 389 U.S. 347 (1967).

[81] 335 U.S. 1 (1948).

[82] 312 U.S. 100 (1941).

[83] Emergency Price Control Act of 1942, ch. 26, 56 Stat. 23.

[84] Fair Labor Standards Act of 1938, ch. 676, 52 Stat. 1060.

[85] 94 S.Ct. at 1513-14. 31 C.F.R. § 103.51 (1973).

[86] 94 S.Ct. at 1514.

[87] 94 S.Ct. at 1535 (Marshall, J., dissenting).

Then once the data is gathered, a governmental department, using existing legal process, can obtain a transfer of the information—information which may have been gathered years before the individual became a suspect.

Justice Rehnquist correctly stated that Congress could constitutionally require that all individuals "engaging in the sending of negotiable instruments through the channels of commerce maintain a record of such action."[88] However, the individual who made such records would be able to assert his fifth amendment right against self-incrimination when asked to produce the records.[89] The Regulations, however, require the financial institution to keep the records, causing individual customers to lose their fifth amendment privilege against self-incrimination, since the financial institution then becomes the producer of the evidence.[90]

The denial of the ACLU's claim that its members' right of association was violated also represents an erosion of an important Constitutional right. Justice Marshall made a valid point while discussing this allegation: "The threat of disclosure entailed in the existence of an easily accessible list of contributors may deter the exercise of first amendment rights as potently as disclosure itself."[91] It is, of course, pure speculation to estimate quantitatively the deterrent effect this decision will have on potential contributors, not only to the ACLU, but also to the vast number of interest groups who rely on the public for donations, but it is not mere speculation that there will be a certain amount of deterrence.

In conclusion, this case represents a compromise of the individual's right of privacy and right of association in his financial dealings—a compromise for which there is no compelling governmental interest. The Regulations set up a nationwide system by which the government forces financial institutions to act as agents to compile financial data on all citizens who write checks in excess of $100. The rationale behind the Regulations is that the required bank records ". . . have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings."[92]

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88 94 S.Ct. at 1510.

89 Hale v. Henkel, 201 U.S. 43, 74 (1906). *See* Marchetti v. United States, 390 U.S. 39, 57 (1968); Wilson v. United States, 221 U.S. 361, 382-84 (1911). A record by private individuals of the interstate shipment of all negotiable instruments over $100 could hardly come within the public records doctrine.

90 *See* Couch v. United States, 409 U.S. 322, 328 (1973); Johnson v. United States, 228 U.S. 457, 458 (1913).

91 94 S.Ct. at 1536 (Marshall, J., dissenting). *See* United States Servicemen's Fund v. Eastland, 488 F.2d 1252, 1265-66 (D.C. Cir. 1973).

92 31 C.F.R. § 103.21 (1973).

While the records undoubtedly will furnish the government with some useful information to aid in enforcement of federal statutes, the Regulations sanction an unwarranted and unconstitutional intrusion into an individual's financial dealings.

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ED. NOTE: The application of the Bank Secrecy Act of 1970 was reviewed by the House of Representatives Task Force on Privacy, chaired by Barry M. Goldwater, Jr. (R-Cal.). The Task Force recommended limiting the Act's application. The House Republican Research Committee, chaired by Louis Frey, Jr. (R-Fla.), in a letter addressed to Republican Congressmen, dated August 21, 1974, approved the recommendations, stating at p. 5:

> On October 26, 1970, sweeping legislation known as the Bank Secrecy Act became law. The Act's intention was to reduce white collar crime by making records more accessible to law enforcement officials. However, in accomplishing its purpose, it allowed federal agencies to seize and secure certain financial papers and effects of bank customers without serving a warrant or showing probable cause. The Act's compulsory recordkeeping requirements, by allowing the recording of almost all significant transactions, convert private financial dealings into the personal property of the banks. The banks become the collectors and custodians of financial records which, when improperly used, enable an individual's entire life style to be tracked down.
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> The general language of the Act allowed bureaucrats to ignore the intent of the law and neglect to institute adequate privacy safeguards. The Supreme Court affirmed this approach by upholding the constitutionality of both the law and the bureaucratic misinterpretation of it.
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> Congress must now take action to prevent the unwarranted invasion of privacy by prescribing specific procedures and standards governing the disclosure of financial information by financial institutions to Federal officials or agencies. Congress must enact legislation to assure that the disclosure of a customer's records will occur only if the customer specifically authorizes a disclosure or if the financial institution is served with a court order directing it to comply. Legislation must specify that legal safeguards be provided requiring that the customer be properly notified and be provided legal means of challenging the subpoena or summons.
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> Passage of such legislation would be an important step forward in reaffirming the individual's right to privacy.