Bank Secrecy case to be argued in U.S. Supreme Court

The final step in the Bank Secrecy Case will be completed on January 16 when ACLU Legal Director Charles Marson presents oral argument before the U. S. Supreme Court. The Justices will also hear from attorneys for the California Bankers Association and the government on that date.

The case, *Stark v. Schultz*, has been working its way through the federal courts since it was filed in June, 1972. The Bank Secrecy Act was passed in 1970 and required banks and other financial institutions to keep records of nearly all banking transactions conducted by their customers down to and including the copying of nearly every check written and the recording of all deposits and withdrawals.

The Act also required the banks to report all domestic transactions over $10,000 and all foreign transactions over $5,000 to the U. S. Treasury Department automatically. The customer did not even have to be informed of this procedure.

Use of these records was virtually unrestricted by the Act. It provided that the Secretary of the Treasury could establish regulations for utilization and dissemination of the records received through the Act's provisions. When those regulations were established, all they said was that almost any government agency could acquire the financial records of any person in the country simply by requesting such records from the Treasury Department.

ACLU Foundation challenged the Act in Federal District Court on behalf of Fortney H. (Pete) Stark who was at that time a bank owner in the East Bay. The California Bankers Association then joined the ACLU in its challenge of the Act.

A three-judge panel heard the case in San Francisco and granted a partial injunction against the Act. They decided that the portion of the law which requires the reporting of domestic transactions to the government was unconstitutional but they upheld the reporting of foreign transactions and the record-keeping portions of the Act.

The government appealed the injunction and ACLU and the CBA cross-appealed the decision to the U.S. Supreme Court. The Solicitor-General is arguing that the federal court improperly knocked out the portion of the Act which they found unconstitutional. The cross-appeal contends that the remainder of the Act which was upheld by the three-judge court should also be struck down as invalid.

By accepting the appeals last November, the Supreme Court set the stage for a major showdown on citizens' rights to financial privacy. Marson will argue the unconstitutionality of the Act on a variety of grounds but chiefly that it violates First Amendment rights of association because the government can learn what organizations or politicians an individual has contributed to; Fourth Amendment rights to be secure from unreasonable searches and seizures of personal property or papers; and, Fifth Amendment rights against self-incrimination.

The way things stand now, the government knows nearly everything we do with our money. It is now up to the nine justices of the Supreme Court to determine whether we have a right to privacy in our financial affairs.