HIGH COURT RULES BANKS MUST GIVE DATA ON DEPOSITS

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Law-Enforcement Backers Win in Its 6-to-3 Decision on Secrecy Act of 1970

COAL MERGER IS BARRED

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Kennecott Fails to Obtain Review of Ruling Against Acquisition of Peabody

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WASHINGTON, April 1—The Supreme Court upheld today the constitutionality of the controversial Bank Secrecy Act, overriding charges that the privacy of depositors is invaded by reports required by the act.

By a vote of 6 to 3, the Court sustained all sections of the 1970 law, which requires extensive record-keeping by banks and reports of certain domestic and foreign transactions to the Secretary of the Treasury.

The decision was a victory for law-enforcement backers in Congress, who had pushed the act through on the ground that the Government needed more such information to catch criminals and tax dodgers at home and to detect the existence of suspected secret bank accounts abroad.

But it was a defeat for civil liberties activists, who maintained that giving the Government access to an individual's bank statement was as much an invasion of his privacy as tapping his telephone.

Records Required

In the case of the Bank Secrecy Act, the majority upheld the validity of requirements that banks keep records of all depositors' identities, copies of all checks and drafts over $100 and all loans over $5,000 except mortgages.

Also sustained were requirements that banks report any transaction in which $5,000 or more passes in or out of the country or in which $10,000 or more is deposited or withdrawn within the country.

Dissenting were the three members of the Court's liberal bloc, Associate Justices William O. Douglas, William J. Brennan Jr. and Thurgood Marshall. All three filed separate opinions.

"I am not yet ready," Justice Douglas declared in one of his angrier dissents, "to agree that America is so possessed with evil that we must level all constitutional barriers to give our civil authorities the tools to catch criminals."

Reasoning Rejected

In another decision today, the Court declined to review a decision upholding an order by the Federal Trade Commission that the Kennecott Copper Corporation divest itself of the Peabody Coal Company, which it bought for more than $600-million in 1968.

Two weeks ago the Court approved, by a 5-to-4 margin, the acquisition of a smaller coal company by a division of the General Dynamics Corporation over protests by the Justice Department. This led some lawyers to predict that the Court might also approve the Kennecott merger.

A three-judge Federal District Court, sitting in California, had upheld the record-keeping provisions over protests by the banking industry that the cost would be burdensome and that law enforcement was not really the banks' responsibility.

The district court ruled, however, that the requirement that banks report domestic deposits and withdrawals to the Internal Revenue Service constituted a violation of constitutional guarantees against unreasonable search and seizure.

Writing for the majority, Associate Justice William H. Rehnquist rejected this reasoning, saying that the banks themselves could not asssert that their constitutional rights were violated or that the reporting requirements were not reasonable.

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Individual depositors and the American Civil Liberties Union, who protested that the reports invaded their privacy, did not have legal standing to raise the question, Justice Rehnquist declared, because they did not prove they had engaged in any $10,000-or-more deposits or withdrawals, the only size for which domestic reports are required.

Justice Rehnquist also ruled that the bank reports did not violate the Fifth Amendment's ban on self-incrimination in the absence of any specific case in which a depositor opposed a bank's making such a report on such grounds.

"To what extent if any," he said, "depositors may claim a privilege arising from the Fifth Amendment by reason of the obligation of the bank to report such a transaction may be left for resolution when the claim of privilege is properly asserted."

Douglas's Viewpoint

Charging that the Bank Secrecy Act required banks "to spy upon their customers," Justice Douglas maintained in his dissent that it was "unadulterated nonsense" to assume that citizens' bank records "have a high degree of usefulness" in fighting crime, as Congress had said.

"Since the banking transactions of an individual give a fairly accurate account of his religion, ideology, opinions and interests," Justice Douglas continued, "a regulation impounding them and making them automatically available to all Federal investigative agencies is a sledgehommer approach to a problem that only a delicate scalpel can manage."

In a brief concurring opinion, Associate Justice Lewis F. Powell Jr. indicated that he approved reporting domestic banking transactions of $10,000 or more but might object if that figure were lowered to take in large numbers of smaller deposits and withdrawals.

"Financial transactions can reveal much about a person's activities, associations and beliefs," said Justice Powell, who wasz joined by Associate Justice Harry A. Blackmun. "At some point, governmental intrusion upon these areas would implicate legitimate expectations of privacy."

In the Kennecott case, the Federal Trade Commission had barred the copper company from keeping the Peabody Coal Company on the ground that the acquisition prevented Kennecott from becoming a competitor in the coal industry on its own.

The United States Court of Appeals for the Tenth Circuit affirmed that ruling, maintaining that there was a trend toward greater concentration of power among fewer companies in the coal industry.

Today's decision to let the Court of Appeals' ruling stand represented a victory for the antitrust division of the Justice Department. It had urged the justices not to review the lower court's ruling. The lone dissenter was Associate Justice Potter Stewart, who would have given the case a hearing.

The ruling in the General Dynamics case two weeks ago was one of the relatively rare occasions on which the Supreme Court has not sustained the Government's objections to a merger on antitrust grounds.

Comment From Kennecott

Commenting on the Supreme Court's denial of Kennecott's petition for a hearing in the divestiture case, Frank R. Milliken, the company president, said:

"We intend to seek reconsideration of the Supreme Court's denial and also to request the Federal Trade Commission to determine whether, in its judgment, changed circumstances in the coal industry and the energy market since the entry of its divestiture order in May, 1971, justify reexamination of the order."

The F.T.C. complaint against Kennecott was issued in August, 1968. In March, 1970 an administrative law judge of the commission ruled in favor of Kennecott. But in May, 1971, the commission reversed the administrative law judge and ordered divestiture of the Peabody Coal Company.