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Searching John Doe's Bank Records

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BANK RECORDS, so rich in detail about people's private lives, are often assumed to be as confidential as the financial files in the bottom drawer of one's own desk. In fact, law enforcement officers can gain access to bank records fairly easily without the customer's knowledge or consent. Because such files are regarded as the property of the bank, a customer has no recourse in most states if a bank voluntarily opens its books to agents of the FBI, the IRS or the local police. Many financial institutions require agents to present a summons or subpena but the customer does not have to be notified of the search. Furthermore, under a 1970 federal law, financial institutions are now required to report large foreign and domestic transactions automatically to the Treasury Department.

The scope of this power to get sensitive personal information through the banks was underscored this week when the Supreme Court held that in some circumstances the IRS may demand certain bank records without being able to name the taxpayer involved. In this instance, a small Kentucky bank, within a 10-day period, made two deposits with the Federal Reserve which included a total of $40,000 in badly disintegrated $100 bills. IRS agents, who were routinely notified, concluded from these facts alone that somebody might owe some tax. An agent therefore issued a "John Doe" summons ordering the bank to produce records showing the source of the $40,000. A district court subsequently narrowed the summons to cover only records of large transactions during that particular month.

In a 7-2 decision, the Supreme Court held that the summons as modified by the district court was a proper exercise of IRS's authority to inquire into possible tax law violations. Chief Justice Warren E. Burger, writing for the Court, acknowledged that IRS's broad investigative powers may sometimes be abused, but concluded that in this situation an investigation was legitimate. Justices Blackmun and Powell, in a concurring opinion, emphasized that the decision was a narrow one and did not authorize general fishing trips where IRS did not have strong indications that a tax liability might exist.

In terms of individual privacy, what is striking about this otherwise fairly minor case is that the argument was wholly between the bank and IRS. There is no indication that "John Doe," the original possessor of the $40,000, even knows, except perhaps through press accounts, that IRS is interested in his financial dealings. By the same token, anyone else who might have deposited a large sum with the Commercial Bank of Middlesboro during that period will have no chance to contest the disclosure of those records to the IRS.

This illustrates again how limited and uncertain the rights of bank customers have become and how much protection against improper searches one surrenders by the ordinary act of putting money in a bank. Sen. Alan Cranston (D-Cal.), Rep. Fortney H. Stark (D-Cal.) and a number of their colleagues are advocating legislation to assure the customers of financial institutions more control over access to the records of their accounts. This week's decision, on top of a long list of earlier cases, shows how useful some new rules to promote confidentiality would be.