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Bank Secrecy Act Backed

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The Supreme Court rejected yesterday a massive attack on the Bank Secrecy Act of 1970, under which the Treasury Department can force banks to keep records of every financial transaction for possible Treasury inspection.

By a 6-to-3 vote the court upheld key portions of the law, in part because the government has not sought to use all of the law's powers. It postponed ruling on privacy claims made by individual bank customers.

The majority, in an opinion by Justice William H. Rehnquist, admitted that the act is so broad that it "might well surprise or even shock those who lived in an earlier era." But he said earlier generations were not plagued by organized crime and Swiss banks, two of the problems Congress faced four years ago when it enacted the law.

In dissent, Justice William O. Douglas argued that Congress and the Treasury had "saddled upon the banks of this nation an estimated bill of over $6 million a year to spy on their customers."

"Unles we are to assume that every citizen is a crook, an assumption I cannot make," said Douglas, it is "sheer nonsense" to claim

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that every citizen's bank records are highly useful for tax and criminal investigations.

The law was strongly supported by the Nixon administration. It grew out of congressional hearings on the difficulty of getting at records of bank transactions by organized crime figures and of tracing money exported and hidden in Swiss bank accounts.

As implemented by Treasury regulations, the law requires banks to record all customer checks and microfilm those over $100, to report all domestic transactions over $10,000 and to report all foreign transactions over $5,000.

Temporarily allied to challenge the law were several California banks and the American Civil Liberties Union. The banks complained of the cost and red tape for themselves and their customers. The ACLU represented individual bank depositors and expressed fears that its own membership lists would be exposed to prying government agents.

Only Justices Douglas, William J. Brennan Jr. and Thurgood Marshall went along with that entire attack. Joining with Rehnquist in the majority were Chief Justice Warren E. Burger and Justices Potter Stewart, Byron R. White, Harry A. Blackmun and Lewis F. Powell Jr.

Powell and Blackmun said in a concurring opinion, however, that "a significant extension" of its regulations by the Treasury Department "would pose substantial and difficult constitutional questions."

"At some point," they warned, they might agree with the dissenters that privacy rights had been violated.

"In their full reach," said Powell, "the reports apparently authorized by the open-ended language of the act touch upon intimate areas of an indivudual's personal affairs. Financial transactions can reveal much about a person's activities, associations and beliefs . . ."

Rehnquist brushed aside the banks' complaints about cost and red tape, saying the banks were flourishing under federal regulation. He noted that while it cost the Bank of America $392,000 in its first year of expanded microfilming, the bank had $29 billion in deposits and a 1971 net income of $178 million.

He rejected also the banks' argument that their customers would suffer because of inability to intervene and block a Treasury summons for their records. "Whatever wrong such a result might work on a depositor it works no injury to his bank," Rehnquist said.

As for the same complaint made by the customers, Rehnquist said they were premature, causing Justice Marshall to accuse the court's majority of engaging in "a hollow charade whereby (constitutional) claims are to be labelled premature until such time as they can be deemed too late."

Rehnquist said depositors must wait until their records are seized before they can claim in court that their privacy rights are threatened. He did not rule that banks must notify their customers nor did he guarantee success for the customers when they do go to court.

A lower federal court had sustained the requirements that banks keep detailed records and report large movements of currency abroad, but had struck down the reporting of domestic transactions as amounting to an unconstitutional search and seizure of personal records. The high court reinstated the domestic reporting provisions.