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Court Limits SFChronicle Access to Bank Data

By Michael Taylor

Police may no longer search randomly through a person's bank records and seize them unless they obtain a court order, the California Supreme Court ruled yesterday.

The unanimous ruling applies to numerous state law enforcement agencies that, in the past, have routinely examined individuals' bank records — without a warrant or subpoena — in an effort to track suspected embezzlers, con men and political radicals.

The court ruling stemmed from a trial three years ago of San Bernardino lawyer Wesley S. Burrows. He was charged with misappropriating some of his client's money in a divorce and child custody case.

Before Burrows' trial, county district attorney's lawyers and sheriff's deputies got a warrant and searched Burrows' office, looking for canceled checks or other financial documents.

During that search, they found some check stubs, but couldn't find the matching checks.

A few days later, sheriff's detective K.A. Kutch called various banks where Burrows had accounts and asked bank executives to send photocopies of Burrows' bank statements. Kutch did not have a warrant or other court order for this activity.

Later, the trial court, despite Burrows' objections, said the search and seizure were reasonable. At that point, Burrows appealed this decision and his trial was suspended.

State Supreme Court Justice Stanley Mosk, in his written opinion, supported Burrows' position. He said that if a copy of a bank statement could be obtained on the strength of a policeman's phone call, information about other transactions — savings accounts, loan applications and the like — could also be acquired.

This kind of "unbridled discretion of the police," Mosk wrote, "opens the door to a vast and unlimited range of very real abuses of police power."

Mosk found "no governmental justification for such a sweeping exploratory invasion into an individual's privacy." He criticized the

Back Page Col. 7

From Page 1

district attorney's argument that banks must work closely with law enforcement officers "because financial institutions desire to foster a favorable public image, and like any good citizen, to assist in the detection of crime."

"How ever laudable these motiyes may be,' the justice said, "we are not here concerned with the conduct or reputation of banks, but with whether the police violated (Burrows" rights by obtaining from banks, without legal process, documents in which (Burrows) had a reasonable expectation of privacy."

Mosk, a former California attorney general, noted that modern technology has made the increasing invasion of individuals' privacy "devastating."

"Development of photocopying machines, electronic computers and other sophisticated instruments have accelerated the ability of government to intrude into areas, which a person normally chooses to exclude from prying eyes and inquisitive minds," Mosk wrote.

Mosk's 23-page opinion was received with disappointment in the San Bernardino district attorney's office.

Deputy District Attorney Bill Timmerman pondered an appeal to the U.S. Supreme Court, but said he could not be sure of that until he had read the decision.

Burrows' lawyer, John Sheehan, said in Los Angeles that he was "delighted, although I'm kind of in a state of shock."

He said that Burrows' "life and work were completely destroyed by this case — his income dropped from $145,000 a year four years ago to $3000 last year." Burrows is currently working as a building contractor in the Lake Tahoe area.

Sheehan said he has filed invasion of privacy suits against three banks involved in the case — Bank of America, Home Savings & Loan and United California Bank. He has also filed suits against the San Bernardino sheriff and district attorney, charging violation of Burrows' civil rights.

Meanwhile, Burrows' trial on the misappropriation charges will be resumed.

But the Supreme Court ordered that prosecutors could not use any of the bank statements the detectives obtained as evidence.