NYTimes SURV FEB 20 1975

High Court Grants I.R.S. Wide Access to Bank Files

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Special to The New York Times

WASHINGTON, Feb. 19—The Supreme Court said today that the Internal Revenue Service, in investigating suspected tax cheats, had the right to compel banks to make available records about large numbers of depositors.

In another decision, the Supreme Court ruled that the I.T.T. Continental Baking Company, having violated a 1962 antitrust consent decree, must pay a $1,000-a-day fine for continuing violation, rather than a single $5,000 penalty for the illegal acquisition itself. [Page 43.]

The high court held in a 7-to-2 vote that the Government agency had power to issue a "John Doe" summons for certain kinds of bank records without identifying any target by name, when evidence created serious suspicion of tax evasion.

The minority charged that the ruling constituted "a sharp and dangerous detour" from restrictions that the Court had previously applied to I.R.S. inquiries and would permit the agency to take "a shot in the dark" to detect tax violators by unwarranted examination of records.

The case. (No. 73-1245, United States v. Biseglia), arose in 1970 when a Middlesboro, Ky., bank forwarded to the Federal Reserve System $40,000 in partly disintegrated $100 bills that has been acquired in two deposits. The information was routinely reported to the revenue agency, which concluded

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that the money might never have been reported for income tax purposes.

The agency issued a summons asking the bank to provide any records that would identify the depositors of the suspicious money, but the bank refused.

A Federal District Court ordered the bank to produce the deposit slips, but the United States Court of Appeals for the Sixth Circuit reversed it, saying that I.R.S. had to name its target to get the records.

Writing for the majority of the Supreme Court, Chief Justice Warren E. Burger said that the revenue service "has a legitimate interest in large or unusual financial transactions, especially those involving cash" and "no meaningful investigation . . . could be conducted if the identity of the persons involved must first be ascertained."

Acknowledging the fears of the minority that this authority might lead to "fishing expeditions" by I.R.S. agents, Chief Justice Burger said that the power should be carefully limited by the courts and noted that investigations based on bank records would not necessarily uncover illegality.

"It is not unknown," the Chief Justice observed, "for taxpayers to hide large amounts of currency in odd places, out of a fear of banks."

In the dissent, Associate Justice Potter Stewart declared, "Any private economic transaction is now fair game for forced disclosure if any I.R.S. agent happens in good faith to want it disclosed." Joining him was Associate Justice William O. Douglas.

Associate Justices Harry A. Blackmun and Lewis F. Powell Jr. joined in a concurring opinion, emphasizing that such records of unnamed depositors should be available to tax agents only when there is "an overwhelming probability if not a certitude" of violation and not over a broad range of general inquiries.

PSYCHIATRIC CASE

In a relatively unusual action, the high court decided not to resolve after all a privacy controversy that it had accepted for review and heard in oral argument. The case (No. 73-1446, Roe v. Doe) involved an attempt by a psychiatric patient to block publication of an anonymous case history of her treatment.

The Justices gave no reason for their move, other than the traditional one that the order accepting the case had been "improvidently granted." However, it appeared likely that they were strongly influenced by a friend-of-the-court brief filed by three professional associations advising just such a course.

At issue before the Supreme Court was the continuation of a temporary injunction against the contested book, and the brief urged the Justices not to consider the case until it had gone to trial and a number of critically important factual and legal questions, now confused, had been resolved.

The brief was filed on behalf of the American Psychiatric Association, the American Psychoanalytical Association and the American Orthopsychiatric Association. The lawyers who drafted it represent two Ralph Nader groups, the Center for Law and Social Policy and the Mental Health Law Project.