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THE BANK SECRECY ACT, THE FOURTH AMENDMENT,
AND STANDING

In 1970, out of growing concern over the use of secret foreign bank accounts and foreign financial institutions to defraud the government of taxes and to conceal other criminal conduct,¹ Congress passed the Bank Secrecy Act.² The Act and its accompanying regulations³ were intended to aid the government in the detection and prevention of "organized and white collar crime"⁴ by requiring that federally insured banks⁵ and both insured and uninsured financial institutions⁶ maintain records which have, or may have, "a high degree of usefulness in criminal, tax and regulatory investigations and proceedings."⁷

Prior to the enactment of the Bank Secrecy Act, only non-bank financial institutions had to report certain transac-

1. HEARINGS ON H.R. 15073 BEFORE THE HOUSE COMMITTEE ON BANKING AND CURRENCY, 91st Cong., 1st & 2d Sess. 18 (1970). For a discussion of the Swiss bank accounts, see Note, *The "Secret" Swiss Account: End of an Era*, 38 BROOKLYN L. REV. 384 (1971).

2. 12 U.S.C. § 1829(b) (1970) (retention of records by insured banks); 12 U.S.C. § 1730(d) (1970) (retention of records of savings and loan institutions insured by the Federal Savings and Loan Ins. Corp.); 12 U.S.C. § 1951-59 (1970) (retention of records by noninsured financial institutions); and 31 U.S.C. § 1051-1143 (1970) (reporting of domestic and foreign currency transactions). Enacted as Act of October 26, 1970, Pub. L. No. 91-508, 84 Stat. 1114-24.

3. 31 C.F.R. §§ 103.21-26 (1972); 31 C.F.R. §§ 103.31-37 (1972).

4. H.R. REP. NO. 975, 91st Cong., 2d Sess. 10 (1970).

5. 12 U.S.C. § 1813(h) (1970) defines insured bank as "any bank the deposits of which are insured in accordance with the provisions of this chapter."

6. "Financial institution" is defined as "each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below: (1) a bank (except bank credit card systems); (2) a broker or dealer in securities; (3) a person who engages in dealing in or exchanging currency, as for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks; (4) a person who engages as a business in the issuing, selling or redeeming of travelers' checks, money orders, or similar instruments, except one who does so as a selling agent exclusively or as an incidental part of another business; (5) a licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others." 31 C.F.R. § 103.11 (1973).

7. 12 U.S.C. § 1829b(a)(1) (1970). The House Committee on Banking and Currency concluded that the secrecy laws of foreign countries furnish opportunities for American citizens to abuse United States law by violating securities law, by avoiding the payment of taxes, by perpetrating fraud on creditors in bankruptcy proceedings, by depositing proceeds of organized crime in foreign banks, and by attempting corporate takeovers. HEARINGS ON H.R. 15073, *supra* note 1, at 20-27.

tions, and then only when the amounts involved, in the judgment of the financial institution, exceeded those "commensurate with the customary conduct of the business, industry or profession of the person or organization concerned."⁸ Before passage of the Act many banks had abolished or limited the practice of photocopying checks, drafts and similar instruments drawn on them for payment.⁹ Their failure to maintain extensive records frustrated law enforcement personnel in securing evidence necessary to criminal, tax and regulatory investigations and proceedings.¹⁰ As a result, Congress enacted the Bank Secrecy Act¹¹ to provide a source of evidence for the Justice Department to use in obtaining convictions.¹²

The Act is comprised of two titles. Title I, the Financial Recordkeeping section, allows the Secretary of the Treasury to require that each insured bank¹³ or financial institution¹⁴ make duplicate records, by microfilm or other method of reproduction, of each check, draft, or similar instrument presented to it for payment or received by it for deposit,¹⁵ with certain exceptions.¹⁶ Banks are required to retain these records for two years;¹⁷ financial institutions must retain them for five years.¹⁸ Under Title II of the Act, the Currency and Foreign Transactions Reporting section, the Secretary may require that each bank and other financial institution report

8. 31 C.F.R. § 102.1 (1959), *repealed*, 31 C.F.R. § 103.22 (1972).

9. H.R. REP. NO. 975, 91st Cong., 2d Sess. 11 (1970).

10. *Id.*

11. The Bank Secrecy Act was enacted on October 26, 1970, to become effective on May 1, 1971, but the implementing Treasury Regulations did not become operative until July 1, 1972.

12. It is much easier for the Justice Department to prove that an individual has failed to file a report in violation of the provisions of the Act than to establish that he has acquired or used funds illegally. S. REP. NO. 91-1139, 91st Cong., 2d Sess. 5 (1970).

13. See definition in note 5, *supra*.

14. See definition in note 6, *supra*.

15. 12 U.S.C. §§ 1829b(d)(1)-(2) (1970) and 31 C.F.R. §§ 103.33(a)-(c) (1972).

16. The bank, as drawee, must maintain copies of all checks except those less than \$100, or those on accounts which can expect to draw over 100 checks per month, such as certain payroll, dividend, or employee benefit checks. 31 C.F.R. § 103.34(b)(3) (1973).

17. 31 C.F.R. § 103.36(c) (1972).

18. *Id.* All such records, those of banks and financial institutions, must be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made. *Id.*

substantial domestic and foreign currency transactions directly to him.¹⁹ Furthermore, the Secretary may require that each person²⁰ making large foreign currency transactions report them directly to him.²¹ These reports must be made on forms prescribed by the Secretary²² and filed according to specific guidelines issued by his office.²³ To insure enforcement of the Act, the Secretary is given the authority to seek certain civil and criminal penalties,²⁴ and to seek an injunction against any act or practice constituting a violation of the provisions of the Act.²⁵

The Act and its implementing treasury regulations were challenged immediately in *Stark v. Connally*.²⁶ In *Stark*, a bank, several of its individual depositors, the California Bankers Association, and the American Civil Liberties Union challenged the Act and its implementing regulations as an unwarranted invasion of privacy in violation of the fourth amendment, and sought a preliminary injunction against its implementation. Concentrating on the broad authority given

19. 31 U.S.C. §§ 1081-83 (1970) and 31 C.F.R. § 103.22 (1972). The latter provides: "(a) Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than \$10,000. (b) . . . [T]his section shall not (1) require reports of transactions with Federal Reserve Banks or Federal Home Loan Banks; (2) require reports of transactions solely with, or originated by, financial institutions or foreign banks; or (3) require a bank to report transactions with an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry and profession of the customer concerned."

20. Person is defined as "an individual, or corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities." 31 C.F.R. § 103.11 (1972).

21. 31 U.S.C. §§ 1141-43 (1970) and 31 C.F.R. §§ 103.23-24 (1972). Each person who causes currency or any monetary instrument exceeding \$5,000 to be transported from the United States on any one occasion to any place outside the United States, and each person who receives more than \$5,000 in currency or other monetary instruments on one occasion from outside the United States must file a report with the Secretary. 31 C.F.R. §§ 103.23-24 (1972).

22. 31 C.F.R. § 103.25(d) (1972).

23. 31 C.F.R. § 103.25 (1972).

24. 31 C.F.R. §§ 103.47 and 103.49 (1972).

25. 31 U.S.C. § 1057 (1970).

26. *Stark v. Connally*, 347 F. Supp. 1242 (N.D. Cal. 1972).

the Secretary to implement the Act rather than on the regulations themselves,²⁷ the federal district court upheld the recordkeeping and foreign reporting provisions, but struck down the domestic reporting provisions as an unreasonable invasion of the fourth amendment provision protecting "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures."²⁸

In allowing the depositor plaintiffs the right to assert a fourth amendment interest in the bank's records of their accounts, the federal district court distinguished prior cases²⁹ which had consistently held that a bank's customers have no standing to object to a subpoena or a summons of the bank's records of their accounts.³⁰ The court concluded that a depositor has a "reasonable expectation"³¹ that the information on his checks will not be made available to the government without his being afforded the protection of existing legal process. Therefore, the court decided that the depositors have a recognizable fourth amendment interest in a bank's records of their accounts, and that the depositor plaintiffs thus had standing to object to the domestic reporting provisions of the Act.³²

27. *Id.* at 1251: "We must look, not merely to what the government says it intends to do, but to the much broader authorization of the Act itself."

28. *Id.* at 1251. The district court's conclusion that the domestic reporting provision was unconstitutional was based primarily upon its finding that "the Act . . . makes no provision for any summons, either judicial or administrative, as the means whereby the Secretary can demand reports from banks and their customers concerning the details of their financial transactions." *Id.* at 1249.

29. *E.g.*, *Harris v. United States*, 413 F.2d 316 (9th Cir. 1969); *Galbraith v. United States*, 387 F.2d 617 (10th Cir. 1968); *Application of Cole*, 342 F.2d 5 (2d Cir. 1965), *cert. denied*, 381 U.S. 950 (1965); *De Masters v. Arend*, 313 F.2d 79 (9th Cir. 1963), *cert. dismissed*, 375 U.S. 936 (1963).

30. The court noted that all the prior cases which had denied standing to a customer to object to a subpoena or a summons of his records held by a bank involved situations in which (1) the government agency was seeking only the bank's records, and (2) the government agency was following established procedures for obtaining such records and (3) the government agency was seeking records claimed to be relevant and material to a specific matter then under inquiry. However, the court found that none of these elements were present in the operation of the domestic reporting provisions of the Bank Secrecy Act. 347 F. Supp. at 1248.

31. *Katz v. United States*, 389 U.S. 347 (1967). See note 54, *infra*.

32. For an excellent discussion of the federal district court's "hypothetical" approach to standing in *Stark v. Connally*, see Note, 51 TEX. L. REV. 602, 605-07 (1973).

On appeal, the United States Supreme Court in *California Bankers Ass'n v. Shultz*³³ upheld the recordkeeping and foreign reporting provisions of the Act³⁴ and sustained the validity of the domestic reporting provisions insofar as they were alleged to infringe on the rights of the financial institutions.³⁵ Significantly, however, the Court refused to entertain the depositor plaintiffs' fourth amendment challenge to the domestic reporting provisions, finding that the individual depositors did not engage in any type of \$10,000 domestic currency transaction that the Act would require their banks to report to the government, and thus, that the depositor plaintiffs lacked standing to challenge the domestic reporting provisions.³⁶ The Court also declined to entertain the bank plaintiff's contentions that the recordkeeping provisions of the Act undercut a depositor's right to challenge effectively a summons of his bank records, and that the bank itself should be allowed to assert a violation of its depositor's rights.³⁷

33. *California Bankers Ass'n v. Shultz*, 416 U.S. 21 (1974). *California Bankers* was decided together with *Shultz v. California Bankers Ass'n* (No. 72-1073) and *Stark v. Connally, sub nom. Stark v. Shultz* (No. 72-1196).

34. The Court, in upholding the recordkeeping provisions against the fourth amendment challenge, concluded that the mere maintenance by the bank of records which can be disclosed only by existing legal process does not violate the fourth amendment rights of either the bank or the depositor plaintiffs. *Id.* at 52. In affirming the constitutionality of the foreign reporting provisions of the Act, the Court relied on the settled principle that Congress has plenary authority to regulate foreign commerce and to delegate significant portions of this power to the President. *See, e.g.*, *Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103, 109 (1948); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936); *Board of Trustees v. United States*, 289 U.S. 48, 56 (1933). *See also* *United States v. Nixon*, 418 U.S. 683, 710 (1975); *United States v. United States District Court*, 407 U.S. 297, 310 (1972).

35. The Supreme Court held that the domestic reporting provisions were valid as to the bank plaintiffs because "the bank is itself a party to each of these transactions, earns a portion of its income from conducting such transactions, and in the past may have kept records of similar transactions on a voluntary basis for its own purposes." 416 U.S. at 66.

36. *Id.* at 68-69. In reaching its conclusion that the individual depositors did not have standing to challenge the domestic reporting provisions, the Court was careful to state that: "In so holding, we do not, of course, mean to imply that such claims would be meritorious if presented by a litigant who has standing." *Id.* at 68, n.28.

37. *Id.* at 51. The court concluded that whether the depositor may be able to assert his rights through the bank, or whether the bank may allege the wrong done to the depositor in obtaining relief "need not now be decided, since, in any event, the claim is premature." *Id.* For the proposition that an

In a vigorous dissent, Justice Douglas criticized the majority's decision upholding the constitutionality of the recordkeeping provisions³⁸ and attacked the validity of the reporting requirements, declaring them a violation of a person's "expectation of privacy"—his expectation that his bank records will be disclosed only pursuant to valid legal process.³⁹ Similarly, Justice Douglas denounced the Supreme Court's avoidance of the issue respecting the constitutionality of the reporting provisions of the Act, and declared that delivery of bank records without a hearing on the issue of probable cause violated the fourth amendment.⁴⁰

The claim of a depositor against compulsory process of bank records acquired without a prior hearing to determine probable cause was raised subsequently in *United States v. Miller*.⁴¹ In *Miller*, the defendant first contended that the recordkeeping provisions of the Act were unconstitutional as a violation of his fourth amendment right to be free from unreasonable searches and seizures. The Fifth Circuit Court of Appeals disposed of the argument by stating that the constitutionality of the recordkeeping provisions had already been upheld in *California Bankers Ass'n v. Shultz*.⁴² Defendant also contended that the introduction into evidence of copies of his bank records, which were obtained from the bank by means of an illegal grand jury subpoena duces tecum,⁴³

injured party may assert his rights through another, *see* *United States v. Scrap*, 412 U.S. 669 (1973) (an unincorporated association had standing to assert the rights of members who breathe air and use forests, rivers, streams, mountains and natural resources); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (appellant had standing to assert the rights of unmarried persons denied access to contraceptives); *N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958) (association had standing to assert violation of its members' right to freedom of association); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (school may assert the rights of parents and children). *But see* *Tileston v. Ullman*, 318 U.S. 44 (1943) (physician lacks standing to assert violation of constitutional rights of patients); *Williams v. Eggleston*, 170 U.S. 304 (1898) (municipality did not have standing to assert rights of citizens).

38. 416 U.S. at 86.

39. *Id.* at 89.

40. *Id.* at 90.

41. 500 F.2d 751 (5th Cir. 1974), *cert. granted*, 421 U.S. 1010 (1975).

42. *Id.* at 756. In *California Bankers Ass'n v. Shultz*, the Supreme Court upheld the recordkeeping and foreign reporting provisions, but declined to address the constitutionality of the domestic reporting provisions due to lack of standing by the depositor plaintiffs. See cases cited at note 34, *supra*.

43. The purported grand jury subpoenas were issued by the United

was a violation of his rights. The Fifth Circuit agreed and reversed the conviction, concluding that obtaining copies of defendant's bank checks by means of a faulty subpoena duces tecum constituted an unlawful invasion of defendant's fourth amendment interests in the privacy of his papers and records, and that the defendant was entitled to a new trial "free from the taint of evidence improperly acquired."⁴⁴

In reversing the defendant's conviction, the Fifth Circuit concluded *sub silentio* that the defendant had standing to challenge a faulty subpoena of his bank records since standing is an essential prerequisite to the hearing of any case or controversy by a tribunal.⁴⁵ In according the defendant the requisite standing to complain of the claimed illegality of the subpoena duces tecum, the court declined to apply earlier cases which had denied standing to a depositor challenging Internal Revenue Service subpoenas of records pertaining to his banking transactions,⁴⁶ or subpoenas of his tax records in the possession of a third party.⁴⁷ The earlier cases held such records to be the property of the bank, and denied recognition

States Attorney rather than by the court or by the grand jury, and on a date when the grand jury was not in session. *Id.* at 758.

44. *Id.* at 758. The government's petition for rehearing and suggestion for rehearing en banc were denied by a narrow 8-7 vote, with seven circuit judges dissenting on the grounds that "the panel opinion departs radically from prior decisions denying to bank customers the standing to challenge subpoenas of bank records of their accounts." 508 F.2d 588, 589 (5th Cir. 1975). However, on June 9, 1975, the Supreme Court granted the government's petition for writ of certiorari. 421 U.S. 1010 (1975).

45. M. FORKOSCH, CONSTITUTIONAL LAW, at 71-76 (2d ed. 1969). The gist of the question of standing is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962). See generally Sedler, *Standing to Assert Constitutional Jus Tertii in the Supreme Court*, 71 YALE L.J. 599 (1962); Note, *Standing to Assert Constitutional Jus Tertii*, 88 HARV. L. REV. 423 (1974).

46. *E.g.*, *Harris v. United States*, 413 F.2d 316 (9th Cir. 1969); *Galbraith v. United States*, 387 F.2d 617 (10th Cir. 1968); *O'Donnell v. Sullivan*, 364 F.2d 43 (1st Cir. 1966), *cert. denied*, 385 U.S. 969 (1966).

47. *E.g.*, *Couch v. United States*, 409 U.S. 322 (1973); *Donaldson v. United States*, 400 U.S. 517 (1971); *Garrett v. United States*, 511 F.2d 1037 (9th Cir. 1975). See also Flippen, *The Internal Revenue Service Summons: An Unreasonable Expense Burden on Banks and an Invasion of Depositors' Privacy?*, 12 AM. BUS. L.J. 249, 253-59 (1974).

of any depositor's rights to them, whether sought under an ownership theory,⁴⁸ or by virtue of an agency theory.⁴⁹

The language used by the Fifth Circuit in *Miller* indicated that the defendant was considered to have both an ownership interest and a "reasonable expectation" of privacy interest in the bank's records of his accounts.⁵⁰ However, to assert an ownership interest in the records of another, a person must show either a proprietary or a possessory right in those records.⁵¹ A depositor probably cannot assert a proprietary or possessory right to those records since the bank owns, possesses, controls, makes, pays for, and maintains the records of a depositor's account.⁵² Numerous federal courts faced with the same issue have concluded that a bank's records of its transactions with a depositor are not the *private* papers of the depositor, and that the depositor has no standing to challenge the validity of a summons of these records.⁵³

48. *Harris v. United States*, 413 F.2d 316 (9th Cir. 1969); *Application of Cole*, 342 F.2d 5 (2d Cir. 1965), *cert. denied*, 381 U.S. 950 (1965); *De Masters v. Arend*, 313 F.2d 79 (9th Cir. 1963), *cert. dismissed*, 375 U.S. 936 (1963); *Foster v. United States*, 265 F.2d 183 (2d Cir. 1959), *cert. denied*, 360 U.S. 912 (1959).

49. *Harris v. United States*, 413 F.2d 316, 318 (9th Cir. 1969); *Schulze v. Rayunec*, 350 F.2d 666, 668 (7th Cir. 1965), *cert. denied*, *Boughner v. Schulze*, 382 U.S. 919 (1965).

50. The Fifth Circuit Court of Appeals' reliance on *Boyd v. United States*, 116 U.S. 616 (1886), and reference to the records as those of the depositor, 500 F.2d at 757, and the statement that the bank depositor's rights are threatened by an improper disclosure, not those of the bank, all establish that the court accorded *Miller* an ownership interest and a cognizable privacy interest in the bank's records. 508 F.2d at 590 n.2.

51. *E.g.*, *Donaldson v. United States*, 400 U.S. 517, 523 (1971); *United States v. Bank of Commerce*, 405 F.2d 931, 934 (3d Cir. 1969); *Galbraith v. United States*, 387 F.2d 617, 618 (10th Cir. 1968).

52. Brief for appellant at 21, *United States v. Miller*, No. 74-1179 (U.S.S. Ct., *cert. granted* June 9, 1975). The bank's ownership, possession and control of the records is similar to that of a corporation's control of its records in the hands of a third party, which the United States Supreme Court has held "are records in which the taxpayer (or depositor) has no proprietary interest of any kind, which are owned by the third person, which are in his hands, and which relate to the third person's business transactions with the taxpayer (or depositor)." *See, e.g.*, *United States v. Weingarden*, 473 F.2d 454, 458 n.4 (6th Cir. 1973); *United States v. Nat'l State Bank*, 454 F.2d 1249, 1251 n.3 (7th Cir. 1972); *S.E.C. v. First Security Bank of Utah*, 447 F.2d 166, 168 (10th Cir. 1971), *cert. denied*, *Nemelka v. S.E.C.*, 404 U.S. 1038 (1972). *But see Zimmerman v. Wilson*, 81 F.2d 847 (3d Cir. 1936).

53. Although these cases have considered the issue in the context of an I.R.S. summons rather than a grand jury subpoena, they are proper author-

It also seems unlikely that a depositor can successfully assert a "reasonable expectation" that the information contained in the bank records will remain private.⁵⁴ If the fourth amendment does not protect information given to a colleague who turns out to be a government agent,⁵⁵ then surely it cannot protect information voluntarily given to a bank that furnishes the information to the government only by subpoena or summons. The data contained on bank checks is not within the category of information that one justifiably intends to keep private;⁵⁶ furthermore, the fourth amendment does not protect what a person knowingly exposes to the public.⁵⁷ The fourth amendment cannot, therefore, be regarded as conclusively protecting information contained on a bank check which the depositor voluntarily injects into the stream of commerce.

Although past jurisprudence consistently has denied standing to a depositor to challenge a subpoena or summons of records of his accounts, these cases have dealt only in the context of a *legal* subpoena or summons.⁵⁸ However, in *Miller* the grand jury subpoena was found to be illegal, having been issued by the United States Attorney and on a date when the grand jury was not in session. As the prior cases had held, a bank depositor may not have a "reasonable expectation" that the information contained on his checks will remain private,

ity for the denial of a depositor's proprietary or possessory right in records of his accounts in the possession of a third party. *See, e.g.*, *United States v. Continental Bank & Trust Co.*, 503 F.2d 45, 49 (10th Cir. 1974); *Fifth Avenue Peace Parade Committee v. Gray*, 480 F.2d 326, 332 (2d Cir. 1973), *cert. denied*, 415 U.S. 948 (1974).

54. Petitioner's Brief for Certiorari at 25, *United States v. Miller*, No. 74-1179 (U.S.S. Ct., cert. granted June 9, 1975). *See, e.g.*, *Katz v. United States*, 389 U.S. 347 (1967). *Katz* established the "reasonable expectation of privacy" approach.

55. *See, e.g.*, *United States v. White*, 401 U.S. 745, 749 (1971); *Hoffa v. United States*, 385 U.S. 293, 302 (1966); *Lewis v. United States*, 385 U.S. 206, 211 (1966).

56. Names of payees or drawers, dates, and other memoranda appearing on such negotiable instruments are not intended to be confidential. Indeed, the commercial function of negotiable instruments requires that such information be conveyed. Furthermore, the drawer is aware that the instrument will be viewed by various employees at the bank where it is cashed or deposited. Brief for appellant at 29, *United States v. Miller*, No. 74-1179 (U.S.S. Ct., cert. granted June 9, 1975).

57. *Katz v. United States*, 389 U.S. 347, 351 (1967). *See* note 54, *supra*.

58. *See* notes 47 & 48, *supra*.

but a depositor does reasonably expect that the information will be divulged by the bank only pursuant to legal process. Failure to accord standing to a depositor to challenge an *illegal* subpoena or summons issued to his bank would subject the depositor to the possibility of conviction on illegally obtained evidence. Likewise, allowing the bank alone the right to object to an illegal subpoena or summons that would subject the depositor to the possibility of conviction on illegally obtained evidence does not furnish sufficient protection for the depositor.⁵⁹

Certiorari was granted in *Miller*, and its disposition by the United States Supreme Court will have a substantial effect on the doctrine of standing and on the right of a depositor to challenge a subpoena or summons of his bank records. An affirmation of *Miller* by the Supreme Court on the ground that the defendant's fourth amendment interests in the privacy of his papers and records were violated would change the current state of the law. On the other hand, a reversal of the Fifth Circuit's decision in *Miller* would deny the defendant the right to challenge illegally obtained evidence used against him at trial. In light of past jurisprudence, it seems reasonable to conclude that the Supreme Court will affirm the decision and hold that a depositor has limited standing to challenge an *illegal* grand jury subpoena of records of the depositor's bank account. However, in reaching its decision, the Supreme Court should thoroughly reassess the right of the people to be secure in their papers and effects against unreasonable searches and seizures, and the government's right of access to information that is useful in criminal investigations. Although this information is helpful to government agencies in investigating criminal activity, it is questionable whether the beneficial effects of access to the information counterbalances the danger of intrusion into the personal affairs of millions of American citizens.

Robert W. Nuzum

59. Since the prior jurisprudence has concluded that the records of the depositor's bank accounts are not the property of the depositor but remain the property of the bank, the court could allow the bank to assert the violation of its depositor's constitutional rights. However, it is doubtful that the bank would take the required interest and effectively argue the depositor's case.