

1994

Ratzlaf Busts: Money Laundering Suppression Act of 1994 Overrules Ratzlaf v. United States

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Recommended Citation

Glotzer, Joshua (1994) "Ratzlaf Busts: Money Laundering Suppression Act of 1994 Overrules Ratzlaf v. United States," *California Western Law Review*: Vol. 31 : No. 1 , Article 8.
Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol31/iss1/8>

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**NOTE, RATZLAF BUSTS: MONEY LAUNDERING
SUPPRESSION ACT OF 1994 OVERRULES
RATZLAF V. UNITED STATES**

In 1970, Congress enacted the Currency and Foreign Transaction Reporting Act ("Bank Secrecy Act").¹ The main purpose of the Act is to require financial institutions to file certain records that have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.² Section 5313(a) of the Act requires a domestic bank involved in a cash transaction exceeding \$10,000 to file a report with the Secretary of the Treasury.³ Section 5324(3) of the Act makes it illegal to structure transactions, i.e. to break up a single transaction over \$10,000 into two or more separate transactions for the purpose of evading a financial institution's reporting requirement.⁴ Section 5322(a) provides for criminal penalties for any person who willfully violates the subchapter or a regulation prescribed under

1. Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified at 31 U.S.C. § 5311-5314, 5316-5326 (1988 & Supp. 1993)).

2. California Bankers Assn. v. Schultz, 416 U.S. 21, 37 (1974). *See, e.g.*, H.R. Rep. No. 975, 91st Cong., 2d Sess. 11 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4394, 4395.

During the last decade, law enforcement agencies have found that the increasing growth of our financial institutions has been paralleled by an increase in criminal activity utilizing these institutions. Petty criminals, members of the underworld, those engaging in 'white collar' crime and income tax evaders use, in one way or another, financial institutions in carrying on their affairs. According to law enforcement officials, an effective fight on crime depends in large measure on the maintenance of adequate and appropriate records by financial institutions. [The Act] "deals with the problem by requiring maintenance of adequate and appropriate records by financial institutions in a manner designed to facilitate criminal, tax, and regulatory investigations and proceedings."

Id.

3. 31 U.S.C. § 5313(a) (1988) provides:

When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

4. 31 U.S.C. § 5324(3) (1988) provides that: "No person shall for the purpose of evading the reporting requirements of § 5313(a) . . . structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions." *See, e.g., infra* note 8 and accompanying text.

the subchapter.⁵ In 1994, the Supreme Court held in *Ratzlaf v. United States*⁶ that to establish that a defendant “willfully” violated section 5324(3) the Government must prove that the defendant knew that structuring was unlawful.

In 1986, Congress amended the Bank Secrecy Act to add section 5324.⁷ Congress specifically enacted this antistructuring provision to prevent the scenario where:

[a] person who converts \$18,000 in currency to cashiers checks by purchasing two \$9,000 cashiers checks of two different banks or in two different days, with the specific intent that the party’s bank or banks not be required to file Currency Transaction Reports for those transactions would be subject to potential civil and criminal liability.⁸

After the enactment of section 5324 most circuit courts of appeals⁹ interpreted the “willful” language of section 5322 as applied to the section 5324 antistructuring provision to mean that the government need only prove that the defendant had knowledge of the bank’s reporting obligation and that he attempted to evade this obligation.¹⁰ Thus, the government need not prove that the defendant knew that structuring the transaction itself was unlawful.¹¹ In 1993, the First Circuit Court of Appeals reached a different conclusion than most other circuits, finding that the term “willful” in section 5322 means that the defendant had to know that structuring was unlawful or that he recklessly disregarded such a duty before he could be found guilty of violating section 5324(3).¹² Under this interpretation, a defendant could purposely try to evade the reporting requirement, but could not be convicted unless he knew that the way he evaded the requirement was illegal; that is, that structuring itself is illegal.

5. 31 U.S.C. § 5322(a) (1988) provides that: “A person willfully violating this subchapter [31 U.S.C. § 5311] . . . shall be fined not more than \$250,000, or imprisoned for not more than five years, or both.”

6. 114 S. Ct. 657 (1994).

7. 31 U.S.C. § 5324(3) (1989).

8. S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986).

9. See *infra* note 31.

10. Joseph B. Mays, Jr., *The Mens Rea Requirements Money Laundering: Symposium: The Anti-Money Laundering Statutes, Where From Here?*, 44 ALA. L. REV. 725, 732 (Spring 1993).

11. *Id.*

[T]he willfulness requirement of section 5322, while mandating that the government prove that the defendant knew of the reporting statute, does not require the government to prove that the defendant also knew that structuring the transactions was unlawful. Instead, the courts have found that, once knowledge of the reporting requirement is established, the structuring conduct itself goes to prove a willful violation on the part of the defendant.

See, e.g., *infra* note 28 and accompanying text.

12. *United States v. Aversa*, 984 F.2d 493, 499 (1st Cir. 1993) (en banc). See *supra* note 28.

In 1994, the Supreme Court decided *Ratzlaf v. United States*,¹³ which attempted to clarify the meaning of “willfulness” in section 5322 and its application to the antistructuring provision of section 5324.¹⁴ More specifically, the Court attempted to resolve the question of whether the government must prove that the defendant knew that structuring was unlawful to convict the person for “willfully” violating section 5324(a) of the Bank Secrecy Act.¹⁵

On September 23, 1994, Congress enacted the Money Laundering Suppression Act¹⁶ which effectively overruled the Supreme Court’s decision in *Ratzlaf*. The new Act amended sections 5322 and 5324 to deny a defendant the opportunity of an ignorance of the law defense in structuring cases.¹⁷

This Note will discuss *Ratzlaf v. United States* in light of the Money Laundering Suppression Act of 1994. Section I will discuss the decisions subsequent to the 1986 Amendment to the Act and prior to the decision in *Ratzlaf* to illustrate the conflict among the circuit courts of appeals. Section II will discuss the majority and dissenting opinions in *Ratzlaf*. Section III will examine how the Money Laundering Suppression Act overruled *Ratzlaf*. Section IV will discuss whether Congress was correct to take action to enact the Money Laundering Suppression Act in light of the Court’s decision in *Ratzlaf* and the effect that the new Act will have on future structuring cases. Finally, Section V will discuss the constitutionality of the Act.

I. STRUCTURING CASES PRIOR TO *RATZLAF*

Congress amended the Bank Secrecy Act, effective January 1987, expressly to make the structuring of transactions to evade the Act illegal.¹⁸ Because section 5322 clearly required a willful violation, and the new structuring statute of section 5324 did not mention the term “willful,” new questions arose regarding what the government was required to prove in order to establish a violation in the context of a structured transaction.¹⁹

The case of *United States v. Holyand*²⁰ exemplified what most courts²¹ believed was the necessary intent to impose criminal sanctions upon a

13. 114 S. Ct. 655 (1994).

14. *Id.*

15. *Id.*

16. Money Laundering Suppression Act of 1994, Pub. L. No. 103-325, 108 Stat. 2160 (1994).

17. H.R. Rep. No. 438, 103d Cong. (1994). “This section makes clear that violation of the prohibition on structuring transactions to evade currency reporting, 31 U.S.C. 5324, requires only an intent to evade reporting requirements, not proof that the defendant knew that structuring was illegal.” (citation omitted).

18. Mays, *supra* note 10, at 731.

19. *Id.*

20. 914 F.2d 1125 (9th Cir. 1990).

21. *See infra* note 31.

defendant for violating the antistructuring provision of the Act.²² In *Holyand*, the defendant was charged with having engaged in currency transactions with various financial institutions in amounts less than \$10,000 in order to avoid the bank's filing of a currency transaction report ("CTR") as required by the Bank Secrecy Act.²³ Prior to the passage of section 5324, Holyand had deposited less than \$10,000 with the intent to prevent his financial institution from filing a CTR.²⁴ After Congress enacted section 5324, Holyand continued to structure his transactions in such a way as to prevent his bank from filing a CTR.²⁵ The court held that the government had to prove that the defendant knew the reporting requirement existed and that the defendant intended to evade the reporting requirement, but did not have to prove that the defendant knew that structuring itself was unlawful.²⁶

In establishing the mens rea requirement for the antistructuring provision, the Ninth Circuit reasoned that "Congress changed the law to make it a crime to structure transactions with the intent to prevent reporting."²⁷ Therefore, to act "willfully" under section 5324, the defendant need only have the *intent* to evade the reporting requirement.²⁸ The court reasoned that "structuring is not the kind of activity that an ordinary person would engage in innocently. Only a person who has a deliberate intention to frustrate the reporting requirement is guilty of the offense."²⁹ Therefore, as long as the defendant purposefully evaded the reporting requirement, the government need not prove that the defendant knew that the act of structuring the transaction itself was unlawful.³⁰ Nine other circuits reached the same conclusion as the Ninth, and have found that the defendant need not know that structuring is unlawful to be criminally liable under the Act.³¹

The First Circuit in *United States v. Aversa*,³² however, has held that in the context of the antistructuring provision of the Bank Secrecy Act, a willful

22. *Holyand*, 914 F.2d 1125

23. *Id.* at 427, *see supra* note 3.

24. *Id.* at 1126.

25. *Id.* at 1127.

26. *Id.* at 1129, 1130.

27. *Id.* at 1129

28. *Id.*

29. *Id.*

30. *Id.* at 1129, 1130.

31. *See, e.g.*, *United States v. Scanio*, 900 F.2d 485, 491 (2d Cir. 1990) ("Our view that a criminal violation of §5324(3) may be established without proof that the defendant knew that structuring is unlawful effectuates Congress' clear intent as is shown by the legislative history surrounding the anti-structuring provision."). *See also* *United States v. Baydoun*, 984 F.2d 175, 180 (6th Cir. 1993); *United States v. Jackson*, 983 F.2d 757, 767 (7th Cir. 1993); *United States v. Beamount*, 972 F.2d 91, 93 (5th Cir. 1992); *United States v. Brown*, 954 F.2d 1563, 1568 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 284 (1992); *United States v. Gibbons*, 968 F.2d 639, 644 (8th Cir. 1992); *United States v. Shirk*, 981 F.2d 1382, 1391, 1392 (3d Cir. 1992); *United States v. Rogers*, 962 F.2d 342, 345 (4th Cir. 1992); *United States v. Dashney*, 937 F.2d 532, 537-38 (10th Cir. 1990), *cert. denied*, 112 S. Ct. 402 (1991).

32. 984 F.2d 493 (1st Cir. 1993) (en banc).

violation occurs when one structures a transaction in violation of a known legal duty; i.e. when the defendant knows that structuring is illegal or when a defendant recklessly disregards such a duty.³³ *Aversa* dealt with three defendants, each of whom was convicted under section 5322 of the Act. The defendants all raised a mistake of law defense, arguing that they did not “willfully” violate the antistructuring statute because they did not know structuring was unlawful.³⁴

The First Circuit considered the meaning of “willful” as it applied to the antistructuring provision of the Act³⁵ and reasoned that the unitary willfulness standard of section 5322 should be given an identical meaning with respect to structuring and CTR violations.³⁶ The court found that the government must prove that the defendant purposely tried to evade the bank’s reporting requirements and that the defendant knew structuring was illegal or that he had a reckless disregard for the fact that structuring was illegal.³⁷ Although the legislative history of the 1986 Amendment indicated that Congress had a different mens rea requirement in mind for the structuring provisions,³⁸ the court did not rely on the intent of Congress. The First Circuit reasoned that the plain meaning and the structure of the statute were clear, and therefore it was unnecessary to look into the legislative history of the Amendment.³⁹ It explained that its interpretation of the term “willfully”

provided a fair, workable mistake of law defense to those accused of currency related crimes and at the same time ensured that defendants who knew of the law’s requirements in a general sense, but recklessly or intentionally failed to investigate the legality of structuring or other proscribed activity would be found guilty.⁴⁰

33. *Id.* at 500.

34. *Id.* at 495.

35. *Id.* at 499.

36. The court stated in pertinent part:

For our part, we take yet a fourth tack—attack adumbrated by the course we set in *United States v. Bank of New England*. . . . In that case, we plotted the intersection between section 5322’s willfulness criterion and section 5313’s CTR requirements. . . . Bank of New England had failed to prepare CTRs when a customer repeatedly withdrew cash aggregating over \$10,000 by means of multiple checks, each written for slightly under \$10,000. The bank argued that it had not engaged in willful misconduct because it had not ‘violated a known legal duty.’ . . . We rejected the bank’s plea because the evidence revealed that the bank’s professed unawareness about whether the reporting requirements applied to the transactions was a product of the bank’s deliberate blindness.

Id. at 498, 499 (citations omitted).

37. *Id.*

38. *See, e.g., supra* note 8 and accompanying text.

39. *Id.* at 499 n.8.

40. *Id.* at 499.

Therefore, the court prevented a situation where a person who purposefully tried to evade the reporting requirements could use an ignorance of the law defense by arguing that, although he tried to evade the reporting requirement, he did not know the act of structuring itself was illegal.

Aversa created a conflict with most other circuits, which had held that mistake of law should not be a defense for defendants accused of violating the structuring provisions of the Act.⁴¹ The Supreme Court's recent decision in *Ratzlaf*, however, purported to clarify whether a defendant's intent to evade a bank's reporting obligation will suffice to sustain a conviction for willfully violating the structuring provision or whether the defendant must also know that the act of structuring itself is unlawful.

II. RATZLAF V. UNITED STATES

A. *The Ninth Circuit Appeal*

In *Ratzlaf*, the defendant, Ratzlaf, did not wish the government to know that he had acquired a large gambling debt.⁴² In 1988, he incurred a debt of \$160,000 playing blackjack at the High-Sierra Casino in Reno, Nevada.⁴³ The casino gave him one week to pay back the balance.⁴⁴ One week later, Ratzlaf and his wife, Loretta, returned to the casino carrying enough cash to pay off the debt.⁴⁵ An official from the casino informed the Ratzlafs that all transactions involving more than \$10,000 in cash had to be reported to the state and federal authorities.⁴⁶ The official added that the casino could accept a cashier's check for the full amount due without triggering any reporting requirements.⁴⁷ When the Ratzlafs were informed that they were required to report cash transactions in excess of \$10,000, they purchased cashier's checks each for less than \$10,000 and each from a different bank.⁴⁸

Based on these actions, the Ratzlafs were charged with structuring transactions to evade the bank's obligation to report cash transactions exceeding \$10,000 in violation of 31 U.S.C. §§ 5322(a) and 5324(3).⁴⁹ At trial, the judge instructed the jury that the government had to prove the defendants' knowledge of the bank's reporting obligation and their attempt to evade the obligation, but that it did not have to prove that the defendant knew that structuring was unlawful.⁵⁰ The trial judge treated section

41. *See supra* note 31.

42. *United States v. Ratzlaf*, 976 F.2d 1280, 1281 (9th Cir.), *rev'd* 114 S. Ct. 655 (1994).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Ratzlaf v. United States*, 114 S. Ct. 655, 657 (1994).

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

5322(a)'s "willfulness" requirement essentially as surplusage when applied to the structuring provision of section 5324(3).⁵¹ Ultimately, the Ratzlafs were convicted, fined, and sentenced to prison.⁵²

On appeal to the Ninth Circuit, the Ratzlafs argued that the Supreme Court's decision in *Cheek v. United States*⁵³ overruled the Ninth Circuit's holding in *Holyand*.⁵⁴ In *Cheek*, the government charged the defendant with "willfully" failing to file tax returns.⁵⁵ In defining the term "willfully" as it applied to criminal tax cases, the court in *Cheek* held that "willfully" means "the voluntary, intentional violation of a known legal duty."⁵⁶ The Court explained that

if the issue is whether the defendant knew of the duty purportedly imposed by the . . . statute . . . he is accused of violating [,] the Government [satisfies the knowledge component of the willfulness requirement if it] proves actual knowledge of the pertinent legal duty. . . . But carrying this burden requires negating a defendant's claim of ignorance of the law. . . . This is so because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it . . . or believe that the duty does not exist.⁵⁷

The Court in *Cheek* stressed that because tax laws are so complex, the Court's construction of the term "willfully" when applied to criminal tax statutes carved out an exception to the traditional rule that ignorance of the law is no defense.⁵⁸

The Ninth Circuit refuted the defendants' contention that *Cheek* should apply to structuring cases and upheld the trial court's construction of the term "willful" as it applied to section 5324(3) of the Bank Secrecy Act.⁵⁹ The court looked to the decisions of four other circuits and held that *Cheek* did not overrule its decision in *Holyand*.⁶⁰

51. *Ratzlaf*, 976 F.2d at 1284.

52. *Ratzlaf*, 114 S. Ct. at 657.

53. 498 U.S. 192 (1991).

54. *Ratzlaf*, 976 F.2d at 1284.

55. *Cheek*, 498 U.S. at 197.

56. *Id.* (applying and discussing *United States v. Pomponio*, 429 U.S. 10, 12 (1976) (per curiam); *United States v. Bishop*, 412 U.S. 346, 360 (1973); *United States v. Murdock*, 290 U.S. 389, 396 (1933)).

57. *Ratzlaf*, 976 F.2d at 1284 (citing *Cheek*, 496 U.S. at 196).

58. *Id.*

59. *Id.* at 1287.

60. *Id.* at 1284.

Criminal tax statutes are more analogous to . . . international currency reporting statutes . . . , since entirely innocent actions can lead to violations of the law. [But] Dashney's actions were anything but innocent, as he went to great lengths to avoid the filing out of CTRs in connection with his transactions. . . . In *United States v. Rogers*, the court agreed with *Dashney*, holding that the *Cheek* exception is a narrow one. The court emphasized that *Cheek's* rationale is inapplicable to the structuring statute because it is not complex. Similarly, in *United States v. Brown*, the court refused to apply the *Cheek* exception to § 5324(3). "[Congress'] intent to facilitate

The *Ratzlaf* court then addressed the First Circuit decision in *United States v. Aversa*,⁶¹ which held that an ignorance of law defense is appropriate for structuring cases.⁶² The Ninth Circuit rejected the analysis in *Aversa* for several reasons.⁶³ First, the court found that structuring statutes are not as complex in the same sense as the criminal tax statute in *Cheek*.⁶⁴ Second, the court believed that the rule of lenity⁶⁵ as applied to the Bank Secrecy Act in *Aversa* should not be given effect.⁶⁶ Thus, the Ninth Circuit reasoned that the lack of a mistake of law defense in structuring cases presents little risk that persons who engaged in “innocent actions will stand unjustly convicted of structuring.”⁶⁷

prosecution of money launderers, stands in direct contrast to the . . . holding in *Cheek* that Congress intended to show special deference to Tax Code violators, [because] the tax laws [are complex].” (citations omitted).

61. 984 F.2d 493 (1st Cir. 1993) (en banc).

62. *Aversa*, 984 F.2d at 510. See also *United States v. Aversa*, 762 F. Supp. 441 (D. N.H. 1991) (The court ruled that *Aversa* could not be convicted of structuring because he did not know structuring was illegal. The court reached this conclusion for three reasons. First, structuring can be innocent behavior in the sense that no concealment of illegal activity is intended or effected. *Id.* at 446. Second, the court rejected the *Scanio/Holyand* definition of “willful” because there would be no difference between the proscribed “willful” violations of § 5324 and non-willful violations of § 5324. *Id.* at 447-48. Finally, the court believed that *Cheek’s* reasoning applied because “[w]hile § 5322(a) may not be technically a criminal tax law it is certainly a criminal law related to taxation.” *Id.* at 447. In addition, the court was convinced that the structuring laws are just as complex and “obscure” to the average citizen as are the tax laws. *Id.*).

63. *Ratzlaf*, 976 F.2d at 1285.

64. *Id.* The tax code’s lengthy and complicated list of income sources that are and are not taxable and the conditions under which exemptions and deductions apply are in stark contrast to the two things outlawed by the money laundering statutes: failure of a financial institution to report transactions that exceed \$10,000 and attempts, successful or unsuccessful, to prevent financial institutions from making the required reports by intentionally avoiding the \$10,000 threshold in banking transactions.

65. *Id.* at 1285, 1286 (“Mens rea is generally required to convict a person for a crime, and where a statute does not clearly specify the mental state required for conviction, courts will use the rule of lenity and construe the ambiguity in favor of the defendant”) (citing *United States v. United States Gypsum Co.*, 438 U.S. 422 (1978); *United States v. Rewis States*, 401 U.S. 808, 812 (1971)).

66. *Id.* (Reasoning that the rule of lenity should not be applied because the language and history of the structuring statute is not ambiguous, and even a ‘strict’ reading of the statute supports, not undercuts, the government’s proffered interpretation).

67. *Id.* at 1287.

The Ratzlafs were aware of the reporting requirements, and the evidence indicates that the Ratzlafs apparently were seeking to avoid payment of their income taxes. The couple took no steps to insure that the IRS would be aware of the assets used to purchase cashiers checks; denied that they earned money from gambling when in fact they had done so; denied any failure to report gambling income; and apparently hid large amounts of currency in or near their home. Therefore, the Ratzlafs cannot be compared to an individual involved in perfectly ordinary business transactions who unconsciously breaks the currency laws. (citations omitted).

B. The Supreme Court

1. The Majority

The United States Supreme Court reversed the Ninth Circuit's decision in *Ratzlaf*,⁶⁸ holding that in order to establish that a defendant "willfully" violated the antistructuring law, the government must prove the defendant acted with knowledge that his conduct was unlawful.⁶⁹ Justice Ginsburg found it significant that section 5322(a)'s omnibus "willfulness" requirement, when applied to the other provisions in the same subchapter, consistently has been read by the courts of appeals to require both a "knowledge of the reporting requirement" and "a specific intent to commit the crime," i.e., "a purpose to disobey the law."⁷⁰

The Court reasoned that if "willfulness" term in section 5322(a) did not apply to structuring cases, the requirement would essentially be surplusage. The Court is generally reluctant to interpret statutory provisions so as to render superfluous other provisions in the same statute.⁷¹ The Court also reasoned that the term "willful" should apply to structuring cases because reading the word differently for each code section would eviscerate the usefulness of a single penalty provision for a group of related code sections.⁷² Establishing that "willfulness" was unambiguous when applied to section 5324(3), the Court went on to address the governments other arguments.

The government argued that violators of section 5324(3) by their very conduct exhibit a purpose to do wrong sufficient to show "willfulness."⁷³ The government asserted that structuring is not the type of activity that an ordinary person would engage in innocently.⁷⁴ The majority rejected this argument, reasoning that currency structuring "is not inevitably nefarious."⁷⁵ The Court pointed to situations where people could violate the antistructuring provision without having any bad purpose.⁷⁶ The Court then cited other

68. 114 S. Ct. at 663.

69. *Id.* at 656.

70. *Id.* at 659 (citing *United States v. Sturman*, 951 F.2d 1466, 1476-77 (6th Cir. 1991)); *United States v. Bank of New England, N.A.*, 821 F.2d 844, 854-59 (1st Cir. 1987); *United States v. Eisenstein*, 731 F.2d 1540, 1543 (11th Cir. 1984); *Cheek v. United States*, 498 U.S. 192, 201; *United States v. Warren*, 612 F.2d 887, 890 (5th Cir. 1980); *United States v. Dichne*, 612 F.2d 632, 636 (2d Cir. 1979).

71. *Id.* at 659-60.

72. *Id.* at 660.

73. *Id.*

74. *Id.*

75. *Id.* at 660, 661.

76. *Id.* at 660-61.

Consider for example, the small business operator who knows that reports filed under 31 U.S.C. § 5313(a) are available to the Internal Revenue Service. To reduce the risk of an IRS audit, she brings \$9,500 in cash to the bank twice each week, in lieu of transporting over \$10,000 once each week. That person, if the United States is right,

situations where a person might innocently have a reason to structure transactions.⁷⁷ The Court indicated that allowing an ignorance of the law defense was appropriate for structuring cases by comparing section 5324 to situations involving tax laws.⁷⁸

The Court next addressed the government's argument that the legislative history of the Act indicated that a defendant could be convicted of violating section 5324(3) without knowing that structuring itself is unlawful.⁷⁹ The Court concluded that the legislative history of the Act indicates that Congress may have intended a defendant be held criminally liable for violating section 5324(3) without knowing that structuring is unlawful.⁸⁰ Despite this, the Court went on to reason that it need not look into the legislative history of a statute if the provision the court is trying to interpret is unambiguous.⁸¹ Finally, the Court concluded in dicta that even if it were to find section 5322's "willfulness" requirement ambiguous as applied to section 5324, it would still resolve any doubt in favor of the defendant.⁸² Therefore, for the government to succeed there must have been no doubt that the legislative

has committed a criminal offense, because she structured cash transactions 'for the specific purpose of depriving the Government of the information that § 5313(a) is designed to obtain.'

77. *Id.* at 661.

For example, a person making cash deposits in small amounts might be fearful that the banks reports would increase the likelihood of burglary. Defendant "offered legitimate explanations for organizing his deposits in amounts under \$10,000. He wanted to respect the privacy of his aunt Rose Miller, the original owner of the money. In light of the fact that Miller hid \$230,000 in her house over a period of many years because of her distrust of banks, a rational jury might believe this explanation. [Defendant] wanted to safeguard his aunt's vacant house and any money and property located therein. A jury could rationally believe that if news were publicized that an eccentric old woman hid thousands of dollars in her house, some people would attempt to burglarize it."

Id. "Real estate partners might also fear that a 'paper trail' from currency transaction reports would obviate efforts to hide existence of cash from spouse of one of the partners." *Id.* at 661 n.14.

78. The Court explained:

The Stamp Act of 1862 imposed a duty of two cents upon a bank-check, when drawn for an amount not less than 20 dollars. A careful individual, having the amount of twenty dollars to pay, pays the same by handing to his creditor two checks of ten dollars each. He thus draws checks in payment of his debt to the amount of twenty dollars, and yet pays no stamp duty. . . . While his operations deprive the government of the duties it might reasonably expect to receive, it is not perceived that the practice is open to the charge of fraud. He resorts to devices to avoid the payment of duties, but they are not illegal. He has the legal right to split up his evidences of payment, and thus to avoid the tax.

Ratzlaf, 114 S. Ct. at 661 (quoting *United States v. Isham*, 84 U.S. (17 Wall.) 496, 506 (1873)) (citations omitted).

79. *Id.* at 661.

80. *Id.*

81. *Id.*

82. *Id.*

history indicated that defendants could be convicted even if they did not know that structuring was illegal.

B. *The Dissent*

Although the Court believed that Congress was unclear on whether ignorance of law should have been a defense in structuring cases, the dissenters in *Ratzlaf* clearly believed that the majority's opinion violated the principle that ignorance of the law is no defense.⁸³ In dissent, Justice Blackmun, joined by Chief Justice Rehnquist, Justice O'Connor, and Justice Thomas, argued that the majority's decision lacked support in the text of the statute, conflicted with basic principles governing the interpretation of criminal statutes, and undermined congressional intent.⁸⁴

Justice Blackmun distinguished section 5324(3) of the Act from other provisions in the subchapter by arguing that the language of the antistructuring provision (i.e., "evading the reporting requirement") identifies the intent required for a section 5324(3) violation.⁸⁵

The offense of structuring, therefore, requires (1) knowledge of a financial institution's reporting requirements, and (2) the structuring of a transaction for the purpose of evading those requirements. These elements define a violation that is "willful" as that term is commonly interpreted. The majority's additional requirement that an actor have actual knowledge that structuring is prohibited strays from the statutory text, as well as from our precedents interpreting criminal statutes generally and "willfulness" in particular.⁸⁶

The dissent countered the majority's contention that the Ninth Circuit's interpretation, rendered section 5322(a)'s "willfulness" requirement superfluous. Justice Blackmun argued that section 5324(3) does describe a "willful" offense since it already requires "the purpose of evading the reporting requirement," and therefore there is no basis for imposing an artificially higher scienter requirement.⁸⁷ The dissent pointed out that the majority's argument "ignores the generality of section 5322(a), which sets out a single standard of 'willfulness' for the subchapter's various reporting provisions. Some of those provisions do not themselves define willful conduct, so the willfulness element cannot be deemed surplusage."⁸⁸ Thus section 5322 is not deemed surplusage if not applied to section 5324's structuring provision

83. *Id.* at 664 (Blackmun, J. dissenting).

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* ("[T]he fact that § 5322(a) requires willfulness for criminal liability to be imposed does not mean that each of the underlying offenses to which it applies must involve something less than willfulness.").

88. *Id.*

because it applies to other sections in the statute that do not have a specific intent requirement. Therefore, the dissent reasoned, the government need only prove that it was the defendant's purpose to evade the reporting requirement and not that the defendant knew that the structuring was unlawful as well.⁸⁹

Justice Blackmun bolstered this argument by distinguishing the cases to which the majority referred in determining the meaning of "willfulness" in section 5322(a) as it applied to the anti-structuring statute of section 5324(3). Justice Blackmun argued that the cases to which the majority referred "stand for the more subtle proposition that a willful violation requires knowledge of the pertinent reporting requirements, and a purpose to avoid compliance with them."⁹⁰ The dissent explained that "the dominant formulation of the standard for a willful violation of the related provisions demands proof of the defendant's knowledge of the reporting requirement and his specific intent to commit the crime."⁹¹ Blackmun argued that the majority misconstrued the term "specific intent" to "import the notion of knowledge of illegality."⁹² The dissent defined specific intent to mean purpose rather than knowledge of the illegality.⁹³ Therefore, the dissent contended, to be found guilty of violating section 5324(3), the government need only prove that the defendant knew of the bank's duty to file a report for transactions over \$10,000, and that it was the defendant's purpose to evade these requirements—not that the defendant knew the act of structuring itself was illegal.⁹⁴

The dissent next argued that the majority's conclusion that structuring was not inherently nefarious was misplaced.⁹⁵ Justice Blackmun pointed out that the conduct of splitting up transactions involving tens of thousands of dollars in cash for the purpose of circumventing a bank's reporting duty is

89. *Id.*

90. *Id.* at 665. See *supra* note 66 and accompanying text.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 666.

Knowledge of the reporting requirements is easily confused with "knowledge of illegality" because, in the context of the other reporting provisions—§§ 5313, 5314, and 5316—the entity that can "willfully violate" each provision is also the entity charged with the reporting duty (e.g. the bank). As a result, a violation with "knowledge of the reporting requirements" necessarily entails the entity's knowledge of the illegality of its conduct (that is, its failure to file a required report). In contrast, § 5324 prohibits a customer from purposefully evading a bank's reporting requirements, so knowledge of the reporting requirements does not collapse into actual knowledge that the customer's own conduct is prohibited. Under the cases interpreting the statute as well as fundamental principles of criminal law, it is one's knowledge of the reporting requirements, not "knowledge of the illegality of one's conduct," that makes a violation "willful."

Id. at 666 n.5.

95. *Id.* at 666.

not the same type of conduct in which courts have allowed a defendant to use an ignorance of the law defense.⁹⁶ Blackmun explained:

[B]y requiring knowledge of a bank's reporting requirements as well as a "purpose of evading" those requirements, the antistructuring provision targets those who knowingly act to deprive the government of information to which it is entitled. In my view, that is not so plainly innocent a purpose as to justify reading into the statute the additional element of knowledge of illegality.⁹⁷

The dissent further argued that Congress determined that purposefully structuring transactions is not innocent conduct.⁹⁸ The dissent also refuted the majority's conclusion that the term "willfully" as interpreted in criminal tax statutes should have the same construction when applied to the structuring provisions of the Bank Secrecy Act.⁹⁹ The dissent distinguished the criminal tax statutes from the structuring provisions by arguing that the provision in the Bank Secrecy Act are not as complex as those in the criminal tax statute.¹⁰⁰

Furthermore, Justice Blackmun argued that the legislative history of the Bank Secrecy Act confirmed that Congress intended to require knowledge of (and a purpose to evade) the reporting requirements, but not specific knowledge of the illegality of structuring.¹⁰¹ To illustrate, the dissent referred to

96. *Id.*

[T]he conduct at issue—splitting up transactions involving tens of thousands of dollars in cash for the specific purpose of circumventing a bank's reporting duty—is hardly the sort of innocuous activity involved in cases such as *Liparota v. United States*, in which the defendant had been convicted of fraud for purchasing food stamps for less than their face value. (citation omitted).

97. *Id.*

98. *Id.* at 666, 667 "[The antistructuring provision] requires proof beyond a reasonable doubt that the purpose of the 'structured' aspect of a currency exchange was to evade the reporting requirements of the Bank Secrecy Act. It is this requirement which shields innocent conduct from prosecution." *Id.* at 667 n.7 (quoting Hearings on S. 571 and S. 2306 before the Senate Committee on Banking, Housing, and Urban Affairs, 99th Cong., 2d Sess. 136-37 (1986) (response of Deputy Asst. Atty. Gen. Knapp & Asst. U.S. Atty. Gen. to written question of Sen. D'Amato)).

99. *Id.* at 667.

100. Justice Blackmun reasoned:

The analogy to the tax field is flawed. Tax law involves a unique scheme consisting of a myriad of categories and thresholds, applied in yearly segments, designed to generate appropriate levels of taxation while also influencing behavior in various ways. Innocent "avoidance" is an established part of this scheme, and it does not operate to undermine the purpose of the tax law. In sharp contrast, evasion of the currency transaction reporting requirements completely deprives the Government of the information that those requirements are designed to obtain, and thus wholly undermines the purpose of the statute.

Id. at 667, 668

101. *Id.* at 667.

*United States v. Tobon-Builes*¹⁰² which was decided prior to the 1986 enactment of the structuring provision. In *Tobon-Builes*, the Eleventh Circuit held that a defendant's "willfulness" was established if he "knew about the currency reporting requirements and . . . purposely sought to prevent the financial institutions from filing required reports . . . by structuring his transactions as multiple smaller transactions under \$10,000."¹⁰³ The *Ratzlaf* dissent then discussed the cases decided before the enactment of the structuring provision that came to the opposite conclusion as *Tobon-Builes*.¹⁰⁴

Justice Blackmun argued that Congress enacted the 1986 structuring provision to codify *Tobon-Builes* and "fill a loophole in the Bank Secrecy Act caused by decisions which refused to apply the sanctions of [the Act] to transactions 'structured' to evade the act's \$10,000 cash reporting requirement."¹⁰⁵ The dissent pointed to the Report of the Senate Judiciary Committee:

[The antistructuring provision] would codify *Tobon-Builes* and like cases and would negate the effect of *Anzalone*, *Varbel*, and *Denemark*. It would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report that contains material omissions or misstatements of fact. In addition, the proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act.¹⁰⁶

The majority argued that the reference to *Tobon-Builes* in the Senate report gave no indication of the meaning of "willfulness" as applied to section 5324(3) of the Act.¹⁰⁷ The dissent interpreted the Senate Report to mean that the scienter standard of *Tobon-Builes* should be applied to the antistructuring portion of section 5324 as well.¹⁰⁸ The dissent argued that

102. 706 F.2d 1092 (11th Cir. 1983).

103. *Id.* at 1101.

104. *Ratzlaf*, 114 S. Ct. at 668 (noting that "[o]ther courts rejected the imposition of criminal liability for structuring concluding either that the law did not impose a duty not to structure or that criminal liability was confined to limited forms of structuring." *See, e.g.*, *United States v. Varbel*, 780 F.2d 758, 760-63 (9th Cir. 1986); *United States v. Denemark*, 779 F.2d 1559, 1561-64 (11th Cir. 1986); *United States v. Anzalone*, 766 F.2d 676, 679-83 (1st Cir. 1985).

105. *Ratzlaf*, 114 S. Ct. at 668 (citing S. Res. No. 433, 99th Cong., 2d. Sess. pt.7 (1986)).

106. *Id.*

107. *Id.* at 663 n.17.

108. *Id.* at 668

The majority misreads the Senate Report as stating that § 5324 creates the structuring 'in addition' to codifying *Tobon-Builes*. . . . The phrase 'in addition' plainly refers to the previous sentence in the Report, which states that § 5324 'would expressly subject to potential liability a person who causes or attempts to cause a financial institution to file a required report that contains material omissions or misstatements of fact.' The 'codification' of *Tobon-Builes* encompasses both sentences, and thus all

the Senate Report did provide evidence of Congress' intent to allow a defendant to be convicted of structuring transactions to evade the reporting requirement even if the defendant did not know that structuring was illegal.¹⁰⁹

The dissent concluded by examining the legislative history of a recent amendment to section 5324.¹¹⁰ The Annunzio-Wylie Anti-Money Laundering Act,¹¹¹ enacted in 1992, created a parallel antistructuring provision for the reporting requirements under 31 U.S.C. § 5316, which governs the transportation of money internationally.¹¹² In analyzing this amendment, the dissent pointed out that "like the provision at issue here, the new provision prohibits structuring 'for the purpose of evading the reporting requirements'," in that case, the requirements of section 5316.¹¹³ The dissent illustrated that

at the time Congress amended the statute, every court of appeals to consider the issue had held that a willful violation of the antistructuring provision requires knowledge of the bank's reporting requirements and an intent to evade them; none had held that knowledge of the illegality of structuring was required.¹¹⁴

The dissent also relied on a House Report which accompanied an earlier bill that contained the international antistructuring provision.¹¹⁵ The House

three subsections of the original § 5324. In any event there is no doubt that the Report's reference to 'codifying *Tobon-Builes*' is a reference to the creation of the antistructuring offense, particularly given that *Tobon-Builes* expressly imposed criminal liability for 'structuring' transactions.

Id. (citations omitted).

109. *Id.* at 668, 669 (citing S. Rep. No. 433, 99th Cong., 2d Sess. p. 22 (1986):

A person who converts \$18,000 in currency to cashiers checks by purchasing two \$9,000 cashiers checks of two different banks or in two different days, with the specific intent that the party's bank or banks not be required to file Currency Transaction Reports for those transactions would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single transaction (for example, splitting \$2,000 in currency into four transactions of \$500 each), would not be subject to liability under the proposed amendment.

110. *Id.* at 668.

111. Pub. L. 102-550, Tit. XV, § 1525(a), 106 Stat. 4064 (1992).

112. 31 U.S.C. § 5316, see Pub. L. 102-550, Tit. XV, § 1525(a), 106 Stat. 4064 (1992).

113. *Ratzlaf*, 114 S. Ct. at 668.

114. *Id.* at 668. See *United States v. Jackson*, 983 F.2d 757, 767 (7th Cir. 1993); *United States v. Brown*, 954 F.2d 1563, 1567-69 (11th Cir. 1992), *cert. denied*, 113 S. Ct. 284 (1992); *United States v. Beaumont*, 972 F.2d 91, 93-95 (5th Cir. 1992); *United States v. Gibbons*, 968 F.2d 639, 643-45 (8th Cir. 1992); *United States v. Rogers*, 962 F.2d 342, 343-45 (4th Cir. 1992); *United States v. Shirk*, 981 F.2d 1382, 1389-92 (3d Cir. 1992); *United States v. Dashney*, 937 F.2d 532, 537-40 (10th Cir. 1991), *cert. denied*, 112 S. Ct. 402 (1991); *United States v. Scanio*, 900 F.2d 485, 489-92 (2d Cir. 1990).

115. *Ratzlaf*, 114 S. Ct. at 669.

Report directly supported the dissent's argument as to the meaning of "willful" when applied to the domestic antistructuring provisions:

Under the new provision, codified as subsection (b) of § 5324, it would be illegal to structure the importation or exportation of monetary instruments with the intent to evade the . . . reporting requirement. As is the case presently for structuring cases involving currency transaction reports, the government would have to prove that the defendant knew of the . . . reporting requirement, but would not have to prove that the defendant knew that structuring itself had been made illegal.¹¹⁶

Although the text from the House Report seems to directly support the dissent's interpretation of section 5324(3), the majority did not find the Report reliable because it was a part of an earlier version of the Annunzio-Wylie Anti-Money Laundering Act which was not enacted.¹¹⁷ Contrary to the dissent, the majority believed that its opinion did not "dishonor the venerable principle that ignorance of the law generally is no defense to a criminal charge."¹¹⁸ However, the majority did indicate that Congress may be the only entity that could clarify the issue as to whether ignorance of the law applies to structuring offenses. In 1994, Congress addressed *Ratzlaf* and found that defendants should not be afforded the defense of ignorance of the law in structuring cases.¹¹⁹

III. MONEY LAUNDERING SUPPRESSION ACT OF 1994

On September 23, 1994, Congress enacted the Money Laundering Suppression Act, which amended section 5324 of the Bank Secrecy Act.¹²⁰ Congress adopted this amendment to correct the Supreme Court's holding in

116. H.R. Rep. No. 28, 102d Cong., 2d Sess., pt. 1, at 45 (1991) (citing *United States v. Holyand*, 903 F.2d 1288 (9th Cir. 1990)).

117. The Court stated: "We do not find that Report, commenting on a bill that did not pass, a secure indicator of congressional intent at any time, and it surely affords no reliable guide to Congress' intent in 1986." *Ratzlaf*, 114 S. Ct. at 663 (citations omitted).

118. *Id.*

119. H.R. Rep. No. 652, 103d Cong., 2d Sess. (1994), reprinted in 1994 U.S.C.C.A.N. 1977. See also *infra* note 121.

120. Pub. L. No. 103-325, 108 Stat. 2160, 2253, 31 U.S.C. § 5324 (1994) provides:

Section 5324 of Title 31, United States Code, is amended by adding at the end of the following new subsection: '(c) Criminal Penalty (1) In General—Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both. (2) Enhanced Penalty For Aggravated Cases—Whoever violates this section while violating another law of law of the United States or as part of a pattern of illegal activity involving more than 100,000 in a 12-month period shall be fined twice the amount provided in subsection (b) (3) or (c) (3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both) of the Bank Secrecy Act.

Ratzlaf.¹²¹ The Authors of the amendment make clear that a defendant may not use an ignorance of the law defense in structuring cases.¹²² The new amendment excepts section 5324 from 5322,¹²³ and in turn denies a defendant the opportunity to use an ignorance of the law defense when charged with violating section 5324.¹²⁴

Congress overruled the Court's holding in *Ratzlaf* to effectuate its original intent as to the mens rea requirement for a violation of section 5324.¹²⁵ Congress believes that the new amendment sufficiently protects innocent people from being convicted for violating section 5324.¹²⁶

Congress' amendment to sections 5324 and 5322 is a correct response to *Ratzlaf* because the Court's decision in *Ratzlaf* erroneously violated the principle that ignorance of the law is no excuse in a criminal case.¹²⁷ This is true for three reasons. First, the Court incorrectly found that structuring transactions for the purpose of evading a bank's reporting requirements was innocent conduct. Second, the Court made a weak comparison of the anti-structuring cases with tax cases that have allowed an ignorance of the law defense. Finally, the Court's conclusion that the statute was unambiguous and therefore gave no effect to the legislative history of the statute violated general principles of statutory construction.

A. Structuring Is Not Innocent Conduct

The reasoning in the cases¹²⁸ which the majority relied to allow an ignorance of the law defense do not apply to the situation where a person tries to evade the reporting requirements of an institution by structuring transactions. This is the case because those situations infer knowledge of the illegality as an element of the crime due to the fact that the reporting statute

121. H.R. REP. No. 652, 103rd Cong., 2d. Sess. (1994), reprinted in 1994 U.S.C.C.A.N. 1977 ("[T]he Conference Report was adopted in order to correct the recent Supreme Court holding in *Ratzlaf v. U.S.*" (citation omitted)).

122. According to Rep. Stephen Neal, "The amendment clarifies that the offense of structuring transactions to evade currency reporting requirements does not require the government to prove that a defendant knew structuring is illegal." *Amendment Introduced to Counter 'Ratzlaf'*, 4 Dep't Just. (P-H) 5 (March 21 1994.).

123. Pub. L. 103-325, *supra* note 120, see also H.R. REP. No. 652.

124. H.R. REP. No. 652 ("The prosecution would need to prove that there was an intent to evade the reporting requirement, but would not need to prove that the defendant knew that structuring was illegal.").

125. H.R. Rep. No. 438, 103rd Cong., 2d. Sess. (1994) ("This amendment restores the clear Congressional intent that a defendant need only have the intent to evade the reporting requirement as the sufficient mens rea for the offense.").

126. *Id.* ("A person who innocently or inadvertently structures or otherwise violates § 5324 would not be criminally liable.").

127. *Cheek*, 498 U.S. at 199 ("The general rule that ignorance of the law or a mistake of law is no defense to a criminal prosecution is deeply rooted in the American legal system.").

128. See *supra* note 31. See also *Ratzlaf*, 114 S. Ct. at 658-60.

criminalizes omission to report otherwise innocent conduct.¹²⁹ One author argues that section 5324 needs a knowledge-of-illegality requirement to protect individuals from conviction for doing an innocent act.¹³⁰ However, the structuring statute differs from these cases because it does not criminalize otherwise innocent conduct.¹³¹ Furthermore, a person who knows of the reporting requirements and purposely tries to evade them has sufficient notice as to the illegality of structuring.¹³² The majority tried to strengthen its comparison of the anti-structuring statute with the other reporting cases and with cases that have allowed ignorance of the law defenses by arguing that structuring was not inevitably nefarious.¹³³

The Court came to the conclusion that structuring was not inevitably nefarious by comparing the anti-structuring statute with other criminal statutes where the defense of ignorance of the law was used.¹³⁴ The majority explained that a person may violate the anti-structuring statute for innocent reasons.¹³⁵ The Court's argument is weak because almost all the people

129. *United States v. Warren*, 612 F.2d 887, 891 (5th Cir. 1980); *United States v. Dichne*, 612 F.2d 632, 636 (2d Cir. 1979). See also Sara N. Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 FLA. L. REV. 287, 315 n.158 (1989) ("The better opinions recognize that knowledge of illegality should be inferred as an element because the statute criminalizes otherwise innocent conduct." (citing *Warren*, 612 F.2d at 891; *Dichne*, 612 F.2d at 636)).

130. C. Dustin Tillman, *Ratzlaf v. United States, The Mens Rea Requirement in Antistructuring Violations*, 19 N.C.J. INT'L L. & COM. REG. 609, 618 (1994):

The knowledge-of-illegality requirement protects an individual from conviction for doing an innocent act. Knowledge of reporting requirements probably cannot provide this protection, and would have to be evaluated under the following standard: Is knowledge of the reporting requirements of CTRs sufficient to alert an individual of the illegality of structuring?

131. One commenter has noted:

[S]tructuring cash transactions to avoid reporting to the government arguably is not innocent. To treat smurfing as innocent requires a narrow definition of innocence, one related only to the defendant's ignorance of this particular statute. Smurfs [Money Launderers] know of the bank reporting law and purposely evade it . . . the only reason to avoid the reporting law is to hide other crime. Smurfing cannot be isolated from the laundering process, nor can it be isolated from the underlying crime that generates cash. To define smurfing as innocent conduct demands both that we ignore the impetus for smurfing and adopt a compartmentalized definition of innocence. The law need not be limited to a fictional, counterintuitive definition of innocence. Smurfs, are not necessarily innocent, even if they are unaware of the anti-smurfing statute.

Welling, *supra* note 129, at 314-15 (1989).

132. See *infra* note 136.

133. *Ratzlaf*, 114 S. Ct. at 661, See *supra* notes 75-76.

134. See *supra* note 78.

135. *Ratzlaf*, 114 S. Ct. at 660 (Persons could violate the anti-structuring statute by making cash deposits in small doses, fearful that the bank's reports would increase the likelihood of burglary).

who are involved in structuring large currency transactions are put on notice as to the illegality of these actions.¹³⁶

B. Tax Cases

The Court tried to strengthen its argument that structuring was innocent conduct by comparing it to tax cases that allowed the ignorance of the law defense.¹³⁷ This comparison is flawed. Although defining a criminal offense based on the structure of one's finances suggests an analogy to tax laws, courts have indicated that the two laws are fundamentally different.¹³⁸ The two situations—structuring finances to avoid paying taxes and structuring finances to avoid filing reports—have different purposes.¹³⁹ When a defendant structures to avoid taxes, he saves money but he still provides information to the government.¹⁴⁰ In contrast, when a defendant structures transactions to avoid the bank's reporting law, he denies the government information.¹⁴¹ The use of the term "evade" in section 5324 rather than "avoid" expressed the Congressional conclusion that any reason to resist reporting was illegitimate and therefore an evasion.¹⁴² Tax avoidance situations are

136. Welling, *supra* note 129, at 318-20:

A defendant learns that the law requires banks to report cash transactions over \$10,000 to the government, and he learns that such reports can be avoided by simply keeping the transaction under \$10,000. The obviousness of the loophole should cause the defendant to question its legitimacy, and alert him that he is acting in an area of questionable legality. Requiring proof that the defendant had actual knowledge of the structuring law would exceed legitimate boundaries of ignorance as a defense because a defendant's lack of actual knowledge is due only to his own negligence . . . Once on notice of potential liability, smurfs reasonably may be expected to investigate the law. Smurfs know they are evading the reporting law. They obviously have researched the scope of the law, and know how to avoid it. Because smurfs are sophisticated enough to investigate the bank reporting law, it is reasonable to impose on them a duty to investigate related laws. If smurfs remain ignorant of the anti-smurfing statute, their ignorance is blameworthy and should not be a defense.

137. *Ratzlaf*, 114 S. Ct. at 661.

138. *United States v. Thompson*, 603 F.2d 1200, 1203 (5th Cir. 1979):

The decision to structure a \$45,000 transaction in currency as five \$9000 loans with the intent to annul the reporting requirements does not equate to a decision to structure a financial transaction in a lawful manner so as to minimize or avoid the applicability of a tax covering only specific activity.

139. Welling, *supra* note 129, at 309.

140. *Id.*

141. *Id.*

142. *Id.* at 310:

Defining a criminal offense based on the structure of one's finances suggests an analogy to tax law. If Joe can legitimately structure his finances to avoid paying taxes, is it not correspondingly legitimate to structure finances to avoid reporting cash transactions? The answer is no. . . . The analogy fails because the two acts, structuring finances to avoid paying taxes and structuring finances to avoid filing reports, have different purposes. When he structures to avoid taxes, Joe saves money

distinctly different from the situation of in the anti-structuring statute. A defendant may have a legitimate reason to avoid taxes, but there exists no analogous concept of legitimate avoidance of the anti-structuring statute. Therefore, the majority's conclusion that section 5324(3) allowed a defendant to use an ignorance of the law defense because the statute was analogous to tax avoidance situations was erroneous. By not allowing an ignorance of the law defense in structuring cases, the Money Laundering Suppression Act does not prosecute people who engage in innocent conduct¹⁴³ but rather people who are purposely trying to evade a known legal duty.

C. Majority Ignored Congress' Original Intent

The majority avoided giving effect to the legislative history of the Bank Secrecy Act by concluding that because the statutory text of section 5324 was unambiguous. Therefore, there was no need to look into the statute's legislative history. The legislative history clearly contradicted the majority's interpretation of section 5324.¹⁴⁴ The conclusion that the statutory text was unambiguous as to the mens rea requirement for section 5324(3) was erroneous for three reasons. First, nine courts of appeals interpreted the statute as not allowing an ignorance of the law defense.¹⁴⁵ Although a division in judicial authority does not automatically render a statute ambiguous, it is one factor that courts have looked at.¹⁴⁶ Second, in determining whether section 5324 was ambiguous, the majority should have examined not only the language and structure of the statute, but also its legislative history and the motivating policies of the statute.¹⁴⁷ In this case, the legislative history of section 5324 indicated that the mens rea requirement for section 5324(3) does not allow an ignorance of the law defense.¹⁴⁸ Finally, the motivating policies¹⁴⁹ of the statute were made less effective by the Court

but still provides information to the government. In contrast, when Joe structures to avoid the bank reporting law, he denies the government information. The statutory use of the term 'evade' rather than 'avoid' expresses the congressional conclusion that any reason to resist reporting is illegitimate and therefore an evasion.

Id.

143. *See supra* notes 131, 136.

144. *See supra* note 105, 109.

145. *See supra* note 31.

146. *United States v. Rodgers*, 466 U.S. 475, 484 (1984).

147. *Bifulco v. United States* 447 U.S. 381, 387 (1980) ("We have always reserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even after resort to 'the language and structure, legislative history, and motivating policies' of the statute."). *Id.*

148. *Welling*, *supra* note 129, at 308, 309 ("The legislative history reveals no explicit congressional statement of intent concerning the meaning of the term 'structure'. But the legislative history does include an example of structuring . . . and the testimony of the government drafters reveals what Congress intended by the term (citing Hearing Before Senate Comm. on Banking, Housing, and Urban Affairs, 99th Cong., 2d Sess. 22, 41, 82-83, 89 (1986)).

149. *See supra* note 8 and accompanying text.

by allowing an ignorance of the law defense for structuring cases.¹⁵⁰ Thus, the majority's decision that section 5324 was unambiguous was erroneous and allowed a defendant to use an ignorance of the law defense where the defense should not be allowed.

The Court also indicated in dicta that even if the statute were ambiguous, the rule of lenity gives the defendant the benefit of a more lenient interpretation in his favor.¹⁵¹ Justice Ginsburg reasoned that lenity principles demand resolution of ambiguities in criminal statutes in favor of the defendant.¹⁵² The rule of lenity should not apply in structuring cases to give the defendant the benefit of the doubt because courts do not apply the rule where to do so would conflict with the purpose of the statute or the implied or express intent of Congress.¹⁵³ In *Ratzlaf*, Justice Ginsburg should not have indicated that the rule of lenity applied because both the implied intent of Congress¹⁵⁴ and the purpose behind the statute¹⁵⁵ indicated that the defendant should not have been able to use an ignorance of the law defense in structuring cases. Thus, the Court's decision in *Ratzlaf* defeated the purpose of the Bank Secrecy Act and in turn made it harder for the government to convict a person accused of violating the statute. Therefore, Congress was correct to take action to overturn the decision in *Ratzlaf* to effectuate the original intent¹⁵⁶ of Congress.

D. *Effect of Money Laundering Suppression Act of 1994 on Future Structuring Cases*

When Congress enacted the Bank Secrecy Act in 1970, it was clear that Congress intended to aid in the prosecution of criminal activity.¹⁵⁷ In 1986, Congress created the antistructuring law to close what it perceived to be a major loophole in the reporting duty scheme.¹⁵⁸ *Ratzlaf* made it very hard for a prosecutor to get a conviction under the structuring statute. To get a conviction under *Ratzlaf*, the prosecution in effect would have to show that a defendant intentionally blinded himself to the illegality of structuring.

Proving willful blindness is still no easy matter itself. According to Welling, prosecutors would have to show that the defendant deliberately blinded himself to the illegal implications of his structuring. "That means for example, showing that someone tried to tell the defendant that his

150. See *supra* note 2.

151. See *supra* note 82.

152. *Ratzlaf*, 114 S. Ct. at 663 (citing *Crandon v. United States*, 495 U.S. 411, 422 (1990)).

153. *Liparota v. United States*, 471 U.S. 419, 427 (1984).

154. See *supra* notes 105, 109, 148 and accompanying text.

155. See *supra* notes 105, 109, 148 and accompanying text.

156. See *supra* notes 105, 109, 148 and accompanying text.

157. See *supra* notes 105, 109, 148 and accompanying text.

158. See, e.g., S. Rep. No. 433, 99th Cong. 2-3, 7 (1985).

for example, showing that someone tried to tell the defendant that his structuring was illegal and he resisted or intentionally chose not to listen."¹⁵⁹

On the other hand, the new Act makes it easier for the government to get a conviction because a prosecutor would not have to prove that a defendant knew structuring was illegal, but rather only that there was an intent to evade the reporting requirement. By preventing the use of an ignorance of the law defense in structuring cases, Congress has effectuated the original purpose of the statute.¹⁶⁰ As a result of the new Act, the government will now be able to effectively prosecute those who purposely try to evade a bank's reporting requirements.

V. CONSTITUTIONALITY OF THE MONEY LAUNDERING SUPPRESSION ACT OF 1994

One author has argued that the new statute may violate a defendant's due process rights.¹⁶¹ Under the due process clause, a defendant needs notice as to the illegality of his actions before his liberty or property can be forfeited to the government.¹⁶² In *Lambert v. California*,¹⁶³ the Supreme Court ruled on the constitutionality of an ordinance which required convicted felons to register with the police within five days of their arrival in the city. The Court held "that due process barred the imposition of criminal liability, absent proof that the defendant knew he was obligated to register, since the statute punished inaction, unaccompanied by any conduct, and there were no circumstances which would alert the offender of the registration obligation."¹⁶⁴ However, the Money Laundering Suppression Act of 1994 does pass muster under *Lambert* because structuring transactions is not innocent conduct¹⁶⁵ and a person who is purposely trying to evade the reporting requirements is put on notice¹⁶⁶ as to the possible illegality of his actions. Furthermore, the new Act does not punish inaction¹⁶⁷ because it punishes only people who purposely try to evade¹⁶⁸ the reporting requirements. Therefore, because the Money Laundering Suppression Act punishes

159. DOJ Moves To Counter Impact of Ratzlaf, 4 DEP'T JUST. (P-H) 9 (Feb. 7, 1994).

160. *Id.* See, e.g., *supra* note 147.

161. Tillman, *supra* note 130 ("[I]f Congress chooses to amend the section by removing the judicially imposed knowledge-of-illegality requirement, a serious question will arise as to whether the statute passes muster under *Lambert*.").

162. *Lambert v. California*, 355 U.S. 225, 228 (1957).

163. *Id.*

164. *Id.* at 228-30; See also Tillman, *supra* note 130, at 7.

165. See *supra* notes 131, 142.

166. See *supra* note 136.

167. *Lambert*, 355 U.S. at 229 ("Violation of its (ordinances') provisions is unaccompanied by any activity whatever, mere presence in the city being the test.").

168. See *supra* note 142.

defendants who know¹⁶⁹ of the bank's reporting requirement and purposely try to evade this requirement, the Act's new structuring provision does not violate due process.

CONCLUSION

Congress amended the Bank Secrecy Act in 1986 to make it harder for criminals who deal in large sums of cash to avoid prosecution from the government. Indeed, one of the main purposes of the Bank Secrecy Act is to ferret out crime.¹⁷⁰ The Money Laundering Suppression Act effectuates Congress' purpose to help rather than hinder the government's ability to prosecute criminals who try to launder money to avoid being prosecuted. A fundamental rule in criminal law is that "[E]very one must feel that ignorance of the law could never be admitted as an excuse, even if it could be proved by sight and hearing in every case."¹⁷¹ *Ratzlaf's* holding circumvented this fundamental rule, and the purpose of the Bank Secrecy Act, making it harder for a prosecutor to convict defendants for money laundering.

The *Ratzlaf* majority misused rules of statutory construction to avoid a legislative history that clearly pointed to forbidding a defendant from using an ignorance of the law defense. The majority further indicated that allowing an ignorance of the law defense in these type of structuring cases was appropriate because structuring is innocent conduct, and therefore a defendant might not be put on notice as to the illegality of his actions. However, the dissent correctly pointed out that money laundering is not the type of conduct that deserves protection from a defense that is rarely afforded to any criminal defendants.

The Money Laundering Suppression Act seems to have cleared up the problem of interpreting the structuring provisions in the Bank Secrecy Act. However, the Supreme Court will probably face this statute again in the form of a due process challenge. A defendant may claim that his right to due process has been violated because he was not put on notice as to the illegality of his actions. People who deal in such large amounts of money have no legitimate reason to keep it secret from the government. Therefore, a person who purposely tries to structure transactions to avoid a known reporting requirement is put on enough notice to investigate the legality of his actions. Because defendants are put on notice as to the possible illegality of their

169. *Lambert*, 355 U.S. at 243-44 ("Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process.").

170. H.R. Rep. No. 975, 91st Cong. 2d Sess. (1986) reprinted in 1971 U.S.S.C.A.N. 4396 ("Criminals deal in money-cash or its equivalent. The deposit and withdrawal of large amounts of currency or its equivalent (monetary instruments) under unusual circumstances may betray a criminal activity.").

171. OLIVER W. HOLMES, *THE COMMON LAW* 41 (Mark D. Howe ed. 1963) (1st ed. 1881).

actions, the Money Laundering Suppression Act does not violate a defendant's due process. In turn, when a drug dealer structures monetary transactions to avoid a government investigation of his illegal activity, he cannot subsequently argue in court that he did not know structuring was illegal, because *Ignorantia juris neminem excusat*.¹⁷²

*Joshua Glotzer**

172. "Ignorance of the law excuses no one."

* Thank you Mom for your guidance and support.