Journal of Criminal Law and Criminology

Volume 88
Issue 3 *Spring*

Article 4

Spring 1998

Federal False Statement Prosecutions: The Absurd Becomes Material

Bradford R. Hise

0091-4169/98/8803-0877
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY
Vol. 88, No. 3

Printed in U.S.A.

FEDERAL FALSE STATEMENT PROSECUTIONS: THE ABSURD BECOMES MATERIAL

United States v. Wells, 117 S. Ct. 921 (1997)

I. INTRODUCTION

In *United States v. Wells*,[1] the United States Supreme Court held that materiality is not an element of the offense of making a false statement to a federally insured bank.[2] The Court concluded that, under a natural reading of 18 U.S.C. § 1014, materiality is not an express element of the offense.[3] The Court further reasoned that the phraseology of the statute conveys no implicit meaning, which the Court believed is confirmed by the legislative history of § 1014.[4] According to the Court, there is no need for a materiality requirement because no one would make an immaterial false statement to a bank.[5]

This Note argues that the Court erred in holding that § 1014 contains no materiality requirement.[6] First, this Note asserts that the Court, in allowing a vast spectrum of immaterial false statements to be criminalized, failed to adhere to the "absurd result principle"[7] of statutory interpretation. Second, this Note contends that the Court misinterpreted and misapplied cases analyzing several predecessor statutes of § 1014.[8] As a result, the Supreme Court incorrectly held that materiality is not an element of the offense of making a false statement to a federally insured bank.

---

[1] 117 S. Ct. 921 (1997).

[2] *Id.* at 923.

[3] *Id.* at 927. *See infra* Section IV.A.

[4] *Wells*, 117 S. Ct. at 928.

[5] *Id.* at 931.

[6] *Id.* at 923.

[7] *See* Sturges v. Crowninshield, 17 U.S. 122 (1819). *See also infra* Section V.A.

[8] *See, e.g.*, Kay v. United States, 303 U.S. 1 (1938); McClanahan v. United States, 12 F.2d 263 (7th Cir. 1926); United States v. Kreidler, 11 F. Supp. 402 (S.D. Iowa 1935). *See also infra* Section V.B.

II. BACKGROUND

A. THE HISTORY OF 18 U.S.C. § 1014

1. Cases Examining § 1014's Predecessor Statutes

The predecessor statutes of 18 U.S.C. § 1014[9] were designed to prevent banking fraud in a wide variety of contexts.[10] The first reported case involving a false statement made to a federally insured lending institution was *McClanahan v. United States*,[11] where the defendant was convicted of violating § 31 of the Federal Farm Loan Act.[12] Meade McClanahan had applied for a loan using an application form supplied by the Federal Farm Loan Board, which was designed to elicit information to determine the advisability of making a loan to the applicant.[13] McClanahan provided false information in response to several of the queries on the application.[14] On appeal to the Seventh Circuit, McClanahan argued that the statute criminalized any false statement, however immaterial or unrelated such statement was to the transaction, and was therefore unconstitutionally broad.[15] He based his materiality argument on the contention that Congress did not have the constitutional power to criminalize "merely immoral" actions.[16] In reaching its decision, the Seventh Circuit determined that the application form had been designed to require an applicant to provide only in-

---

[9] 18 U.S.C. § 1014 reads in pertinent part:

> Whoever knowingly makes any false statement or report . . . for the purpose of influencing in any way the action [of a federally insured bank] upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan . . . shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1014 (1996).

[10] There is a marked dearth of reported cases involving § 1014 or its predecessor statutes. The predecessor statutes served roughly the same purpose as 18 U.S.C. § 1001, which criminalizes fraud perpetrated against the United States government, its agencies and its departments. *See, e.g.*, Ogden v. United States, 303 F.2d 724 (9th Cir. 1962), *cert. denied*, 376 U.S. 973 (1964).

[11] 12 F.2d 263 (7th Cir. 1926).

[12] Section 31 of the Federal Farm Loan Act read in pertinent part: "Any applicant for a loan under this act, who shall knowingly make a false statement in his application for such loan . . . shall be punished . . . ." 12 U.S.C. § 981 (1926).

[13] *McClanahan*, 12 F.2d at 264.

[14] *Id.*

[15] *Id.* at 263.

[16] *Id.*

formation material to the determination of the applicant's eligibility for a loan.[17] The court therefore concluded that immaterial information does not provide the basis for a prosecution under the Federal Farm Loan Act.[18]

In the second reported case involving a predecessor statute of § 1014, *United States v. Kreidler*,[19] the defendant was indicted for making a false statement to the Home Owners' Loan Corporation in violation of § 8(a) of the Home Owners' Loan Act of 1933.[20] A. L. Kreidler challenged the validity of his indictment on several grounds, including materiality.[21] He claimed that a false statement had to be "material and calculated to deceive" to constitute an offense under § 8(a).[22] As in *McClanahan*, the *Kreidler* court determined that "a statement made to influence the whim of some officer of the corporation . . . would not support the charge [of criminal wrongdoing]."[23] Rather, the statement "must be relevant and material."[24] The court concluded that the false statements made by Kreidler were relevant to the Home Owners' Loan Corporation's application process and overruled Kreidler's demurrer to the indictment.[25]

Kay v. United States was perhaps the most important case involving one of § 1014's predecessor statutes.[26] Gertrude Kay was convicted of violating the antifraud provisions of the Home

---

[17] *Id.*

[18] *Id.*

[19] 11 F. Supp. 402 (S.D. Iowa 1935).

[20] Section 8(a) of the Home Owners' Loan Act of 1933 provided that:

> [w]hoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Home Owners' Loan Corporation of the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this Act, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

12 U.S.C. § 1467(a) (1934).

[21] *Kreidler*, 11 F. Supp. at 403.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 404.

[26] 303 U.S. 1 (1938).

Owners' Loan Act of 1933.[27] Kay overstated by two to four times her claims against a second mortgage.[28] Kay argued that because the Home Owners' Loan Corporation never approved or made a loan to her, her false statement was irrelevant, and she therefore could not be convicted of violating the Act.[29] The Supreme Court disagreed: making a false statement with the intention of deceiving the Home Owners' Loan Corporation is a criminal act, regardless of the Corporation's ultimate decision whether to grant the loan.[30] The Court thus held that reliance is irrelevant in a § 8(a) prosecution.[31]

2. The Creation of § 1014 in 1948

As part of its reorganization of the federal criminal code in 1948, Congress consolidated thirteen statutes criminalizing false statements made to federally insured lending institutions, thereby creating § 1014.[32] Ten of the predecessor statutes did not contain a materiality requirement,[33] while three explicitly

---

[27] *Id.* at 3. *See supra* note 20 for the text of § 8(a) of the Home Owners' Loan Act. Kay also appealed her conviction for violating § 8(e) of the Home Owners' Loan Act, but those arguments are not material to this Note.

[28] *Kay*, 303 U.S. at 5.

[29] *Id.*

[30] *Id.* at 5-6. As the Court explained:

> It does not lie with one knowingly making false statements with intent to mislead the officials of the Corporation to say that the statements were not influential or the information not important . . . . Whether or not the Corporation would act favorably on the loan is not a matter which concerns one seeking to deceive by false information.

Id.

[31] *Id.*

[32] 18 U.S.C. § 1014 (Reviser's Note) (1994).

[33] *See* 7 U.S.C. § 1514(a) (1946) ("mak[ing] any statement knowing it to be false . . . for the purpose of influencing"); 12 U.S.C. § 981 (1946) ("knowingly mak[ing] any false statement in an application for a loan"); 12 U.S.C. § 1122 (1946) ("mak[ing] any statement, knowing it to be false, for the purpose of obtaining . . . any advance"); 12 U.S.C. 1123 (1946) ("willfully overvalu[ing] any property offered as security"); 12 U.S.C. §1248 (1946) ("mak[ing] any statement . . . knowing the same to be false"); 12 U.S.C. § 1312 (1946) ("mak[ing] any statement, knowing it to be false, for the purpose of obtaining"); 12 U.S.C. § 1313 (1946) ("willfully overvalu[ing] any property offered as security"); 12 U.S.C. § 1441(a) (1946) ("mak[ing] any statement, knowing it to be false . . . for the purpose of influencing"); 12 U.S.C. § 1467(a) (1946) (same); 15 U.S.C. § 616(a) (1946) ("mak[ing] any statement knowing it to be false . . . for the purpose of obtaining . . . or for the purpose of influencing").

criminalized only material false statements.[34] The new section authorized the prosecution of "[w]hoever knowingly makes any false statement or report . . . for the purpose of influencing in any way the action of [a federally insured lending institution] upon any application, advance, discount, purchase agreement, repurchase agreement, commitment, or loan."[35] Those convicted could be fined "not more than $5,000 or imprisoned not more than two years, or both."[36] Although all thirteen predecessor statutes contained different punishment provisions, the punishment prescribed by § 1014 was deemed "adequate for the offenses described" by the statute.[37] The consolidated statute contained "changes . . . in phraseology to secure uniformity of style, and some rephrasing was necessary, but . . . was without change of substance," except for changes in provisions relating to punishment.[38] Section 1014 did not contain an explicit materiality requirement, nor was materiality mentioned in the Reviser's Note.[39]

3. Cases Examining § 1014

In the fifty years since the consolidation, virtually every circuit that examined § 1014 prior to *Wells* held that materiality is an implicit element of the offense.[40] Only the Second Circuit has refused to recognize an implicit materiality requirement in the statute.[41] The rationale for implying a materiality requirement was that "otherwise the statute would punish harmless attempts—that is, the making of a false statement incapable of influencing a bank—and this would greatly expand the poten-

---

[34] *See* 7 U.S.C. § 1026(a) (1946) (making a "material representation"); 12 U.S.C. § 596 (1946) (making a "material statement"); 12 U.S.C. § 1138d(a) (1946) (making a "material representation").

[35] 18 U.S.C. § 1014 (1948).

[36] Section 1014 has since been amended to allow fines of up to $1,000,000, imprisonment for not more than 30 years, or both. *See* 18 U.S.C. § 1014 (1996).

[37] *See* 18 U.S.C. § 1014 (Reviser's Note) (1994).

[38] *Id.*

[39] *See* 18 U.S.C. § 1014 (1996); *see also* 18 U.S.C. § 1014 (Reviser's Note) (1994).

[40] *See, e.g.*, United States v. Lopez, 71 F.3d 954 (1st Cir. 1995); United States v. Spears, 49 F.3d 1136 (6th Cir. 1995); United States v. Staniforth, 971 F.2d 1355 (7th Cir. 1992); United States v. Haddock, 956 F.2d 1534 (10th Cir. 1992); United States v. Ryan, 828 F.2d 1010 (3d Cir. 1987); United States v. Thompson, 811 F.2d 841 (5th Cir. 1987); Theron v. United States Marshal, 832 F.2d 492 (9th Cir. 1987); United States v. Bonnette, 663 F.2d 495 (4th Cir. 1981).

[41] *See, e.g.*, United States v. Cleary, 565 F.2d 43 (2d Cir. 1977).

tial reach of the statute, with few benefits that we can see."[42] The circuits that implied a materiality element considered a statement to be material if it had the capacity to influence a bank or lending institution when evaluating a loan application.[43] Courts thus clearly saw an implicit materiality requirement as a necessary element of the false statement offense.

Prior to *Wells*, the United States Supreme Court examined the offense elements of § 1014 in only one other case.[44] *Williams v. United States* involved a complicated check-kiting scheme and presented the Court with the issue of whether passing a bad check constitutes a "false statement" within the context of § 1014.[45] In answering that question in the negative, the Court defined two "propositions" that the Government must establish in order to convict a person for violating § 1014:[46] (1) the Government must demonstrate that the defendant made a "false statement or report, [or] willfully overvalue[d] any land, property or security;"[47] and (2) the Government must establish that the defendant did so "for the purpose of influencing in any way the action of [a described financial institution] upon any application, advance, . . . commitment, or loan."[48] Because there was no question that the checks were material to the allegations, the Court did not include proving the materiality of the false statements among the required propositions.[49] The Government argued that a bad check should fall within the definition of "false statement."[50] The Court disagreed, noting that the Government's interpretation of § 1014 "would make a surprisingly broad range of unremarkable conduct a violation of federal law."[51] Indeed, "any check, knowingly supported by insufficient funds, deposited in a federally insured bank could give rise to criminal liability."[52] The Court concluded that Congress did not intend for § 1014 to amount to a national bad check law and de-

---

[42] *Staniforth*, 971 F.2d at 1358.

[43] United States v. Goberman, 458 F.2d 226, 229 (3d Cir. 1972).

[44] *See* Williams v. United States, 458 U.S. 279 (1982).

[45] *See id.* at 280.

[46] *Id.* at 284.

[47] *Id.* (quoting 18 U.S.C. § 1014).

[48] *Id.* (quoting 18 U.S.C. § 1014).

[49] *See id.* at 284-87.

[50] *Id.* at 285-86.

[51] *Id.*

[52] *Id.* at 286.

termined that a check drawn on insufficient funds is outside the conduct criminalized by § 1014.[53]

B. THE ABSURD RESULT PRINCIPLE

Courts generally interpret statutes according to their plain meaning, because the words chosen by a legislature are the most persuasive evidence of the purpose of a statute.[54] There are instances, however, in which reliance upon the plain meaning of the words leads to absurd or frivolous results.[55] The absurd result principle provides judges with an exception to the normal rules of statutory interpretation.[56] Under this principle of statutory construction, judges need not apply the plain meaning of a statute if such an application would lead to "patently absurd consequences" that Congress clearly did not intend.[57] Such a "narrow exception" "does not intrude upon the lawmaking powers of [the legislature], but rather demonstrates respect for the coequal Legislative Branch, which [courts] assume would not act in an absurd way."[58] The principle is so widely accepted among jurists that even strict literalists acknowledge that there are instances in which the plain meaning of a statute cannot control a judicial decision.[59]

The absurd result principle has a long history in the United States, first appearing in 1819.[60] In *Sturges v. Crowninshield*, the Supreme Court acknowledged that in some instances a literal interpretation of a statute is extreme and requires a more lenient construction.[61] In *United States v. Kirby*, the Court first in-

---

[53] *Id.* at 287.

[54] *See* United States v. American Trucking Ass'ns Inc., 310 U.S. 534, 542-43 (1940).

[55] *Id.* at 543.

[56] Veronica M. Dougherty, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 AM. U. L. REV. 127, 127-28 (1994).

[57] Public Citizen v. United States Dep't of Justice, 491 U.S. 440, 470 (1989) (Kennedy, J., concurring) (quoting United States v. Brown, 333 U.S. 18, 27 (1948)).

[58] *Id.* (Kennedy, J., concurring).

[59] *See, e.g.*, Green v. Bock Laundry Mach. Co., 490 U.S. 504, 527 (1989) (Scalia, J., concurring).

[60] *See* Sturges v. Crowninshield, 17 U.S. 122 (1819).

[61] *Id.* at 202-03. The Court first enunciated the absurd result principle when it stated:

> [I]f, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be

voked the principle to strike down a criminal conviction.[62] Kirby was one of several defendants charged with violating a federal statute which criminalized knowingly and willfully obstructing the passage of mail.[63] The conviction stemmed from an incident in which Kirby, the county sheriff, arrested the local mail carrier, who had been indicted on a murder charge, while the latter was engaged in his official duties.[64] The Court determined that the law should not be applied against Kirby because:

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter.[65]

The Court determined that common sense dictated that Congress did not intend for the statute to apply in this situation and reversed Kirby's conviction.[66]

In more recent years, the absurd result principle has been used infrequently but consistently.[67] A notable recent examination of the principle occurred in *Green v. Bock Laundry Machine Co.*, where the Court considered the applicability of Federal Rule of Evidence 609(a)[68] in a civil proceeding.[69] The majority, noting that the rule's plain language compels an "unfathomable" result in a civil case, held that Federal Rule of Evidence

---

> so monstrous, that all mankind would, without hesitation, unite in rejecting the application.

Id.

[62] United States v. Kirby, 74 U.S. 482 (1868).

[63] *Id.* at 484.

[64] *Id.*

[65] *Id* at 486-87.

[66] *Id.*

[67] *See, e.g.*, Washington Legal Found. v. United States Dep't of Justice, 491 U.S. 440 (1989); K Mart Corp. v. Cartier, Inc., 486 U.S. 281 (1988).

[68] At the time of *Green*, Federal Rule of Evidence 609(a) provided that:

> For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant, or (2) involved dishonesty or false statement, regardless of the punishment.

FED. R. EVID. 609(a) (1989). Rule 609(a) was subsequently amended to remedy the problem identified in *Green*. *See* FED. R. EVID. 609(a) (1997).

[69] Green v. Bock Laundry Mach. Co., 490 U.S. 504 (1989).

609(a) applies only in criminal actions.[70] Justice Scalia, in his concurring opinion, wrote that looking at the potential "bizarre disposition" of the case was sufficient for the Court to determine that Rule 609(a) did not apply in a civil action.[71] It is thus accepted practice for the Court to look at the potential result of a natural reading of a statute and to reach a different conclusion if such a reading of the statute's text would be absurd.

III. FACTS AND PROCEDURAL HISTORY

Jerry Wells and Kenneth Steele had a history of participating together in business ventures.[72] In early 1986, the owner of Doss Office Systems, Inc. (Doss), a lessor and servicer of photocopy machines, approached Wells and Steele and offered to sell them the company.[73] Because neither Wells nor Steele had any knowledge of the copier leasing and servicing business, they asked Jim Russell, Doss's then-vice president of sales, to join in the venture.[74] Russell agreed, and in May of 1986, the three men assumed control of Doss, which they renamed Copytech Systems, Inc. (Copytech).[75] Russell assumed control of most of the day-to-day operations of Copytech; Wells and Steele later became involved in those functions only after Russell began experiencing emotional problems.[76]

From the outset, Copytech had severe financial difficulties that required prompt attention.[77] Copytech had a serious cash flow problem, as well as more than $8 million in outstanding debts.[78] In order to obtain the cash necessary to keep Copytech afloat, the new owners assigned Copytech's rights to anticipated income from equipment lease payments to banks in exchange for a lump sum payment.[79] Some of Copytech's lease agreements were Copier Management Program (CMP) leases, under

---

[70] *Id.* at 510-11.

[71] *Id.* at 527 (Scalia, J., concurring).

[72] United States v. Wells, 63 F.3d 745, 747 n.2 (8th Cir. 1995).

[73] *Id.* at 747.

[74] Brief for Respondents at 3, United States v. Wells, 117 S. Ct. 921 (1997) (No. 95-1228).

[75] *Wells*, 63 F.3d at 747.

[76] Brief for Respondents at 3, *Wells* (No. 95-1228).

[77] *Wells*, 63 F.3d at 747.

[78] *Id.*

[79] *Id.* The lump sum payment was equal to the present value of the income stream of a 60 month copier lease, discounted to yield the bank a 13-15% profit. *Id.*

which the lease fees were calculated to include both the fixed costs of the equipment and the variable, or "soft," costs of servicing the equipment.[80] When Copytech sold its income interest in a CMP lease to a bank, Copytech retained the obligation to pay the "soft" costs incurred under those leases.[81] In some instances, Wells, Steele and Russell, along with their spouses, had to sign personal loan guarantees to cover those costs.[82]

Copytech's financial difficulties were exacerbated by the state of its relations with several banks in the Kansas City, Missouri, area.[83] For example, to protect itself against potential default by Copytech, Boatmen's Bank of Kansas City required Copytech to maintain a cash reserve account equal to 15% of the value of all of Copytech's outstanding leases, approximately $500,000.[84] Late in 1986, after Copytech overdrew on its account at the First State Bank of Joplin (First State Bank), the company ended its relationship with Boatmen's Bank and consolidated all of its accounts at First State Bank.[85] This freed $500,000 to cover the overdrafts, as well as other expenses, because First State Bank did not require Copytech to maintain a cash reserve account.[86] A third bank, Norwest Bank, also offered in 1986-87 to purchase CMP contracts from Copytech, but demanded that Copytech keep a reserve account similar to the closed account at Boatmen's Bank.[87] Copytech did not want to lose its limited financial flexibility by tying up significant amounts of money in a reserve account and consequently declined Norwest's offer.[88]

Copytech's cash flow difficulties persisted despite the company's financial maneuvering.[89] In an effort to obtain cash for Copytech, and to avoid having to tie up cash in a reserve account, the owners of Copytech misrepresented to banks their

---

[80] *Id.* "Soft" costs were the expenses related to using copiers, other than the monthly rental fee, such as maintenance and replacement parts. *Id.*

[81] *Id.*

[82] Brief for Respondents at 4, *Wells* (No. 95-1228).

[83] *Wells*, 63 F.3d at 747-48.

[84] *Id.* at 748.

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

various service commitments.[90] Copytech drafted new CMP lease agreements that gave the lessees responsibility for the upkeep of the leased equipment.[91] The revised CMP contracts were signed in conjunction with separate service addenda, which shifted maintenance responsibilities back to Copytech.[92] The company then sent the CMP leases to its funding sources without enclosing the service addenda, thereby concealing Copytech's service and maintenance obligations.[93] Having no direct knowledge of Copytech's ongoing service commitments, the banks continued to fund Copytech without requiring the company to maintain cash reserve accounts.[94] At the same time, however, the banks knew that Copytech's relationships with its customers involved more than just the equipment leases because CMP customers paid the lease and service contract fees to the banks in one monthly payment.[95] Any money over and above the monthly lease payment fee received by the banks was deposited into Copytech's accounts.[96]

After discovering this scheme, the Government indicted Wells and Steele[97] on one count each of conspiracy under 18 U.S.C. § 371,[98] alleging the two men had conspired to make material false statements to banks by omitting any reference to the CMP service addenda in their communications with the banks.[99] The Government also charged Wells and Steele with four counts of making material false statements to a financial institution in

---

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] Brief for Respondents at 6, *Wells* (No. 95-1228).

[96] *Id.*

[97] Russell entered into a plea agreement with the Government before trial and testified against Wells and Steele. *See* Brief for Petitioner at 4 n.2, United States v. Wells, 117 S. Ct. 921 (1997) (No. 95-1228).

[98] 18 U.S.C. § 371 reads in pertinent part:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

18 U.S.C. § 371 (1997).

[99] *Wells*, 63 F.3d at 748.

violation of 18 U.S.C. § 1014.[100] Before trial, the district court judge dismissed one material false statement count for failure to state an offense.[101] At the close of evidence at trial, the judge ordered acquittal on two more of these counts.[102] The final remaining counts alleged that Wells and Steele made false statements to O'Bannon Bank by forging their wives' signatures on unconditional personal loan guarantees.[103]

In their own defense, Wells and Steele asserted that omission of information cannot be a false statement, that the information was not technically "false" because it was literally true, and that withholding the CMP service addenda from the banks was not material.[104] As to the false statement charge, Wells and Steele admitted they had forged their wives' signatures but claimed to have done so with the authority, or at least a good faith belief in their authority, to do so.[105]

At the end of the trial, the district court instructed the jury that the elements of the offense of making a false statement to a bank are: (1) that the bank was federally insured; (2) that the defendants knowingly made, or caused to be made, a false statement to the bank; and (3) that the defendants made that false statement for the purpose of convincing the bank to purchase lease contracts.[106] At the Government's request, and despite defense objection, the court further instructed the jury that withholding a material fact rendered a statement or representation false, and defined a material fact as one "that would be important to a reasonable person in deciding whether to engage or not to engage in a particular transaction."[107] The defendants contended that materiality was an issue for the jury to decide, while the Government argued that it was an issue for the judge.[108] Following Eighth Circuit precedent,[109] the judge agreed with the Government and deemed the defendants'

---

[100] Brief for Respondents at 6, *Wells* (No. 95-1228). *See supra* note 9 for the pertinent text of § 1014.

[101] *Wells*, 63 F.3d at 748.

[102] Brief for Respondents at 3, *Wells* (No. 95-1228).

[103] *Id.*

[104] *Id.* at 3, 5.

[105] *Wells*, 63 F.3d at 748.

[106] Brief for Petitioner at 6, *Wells* (No. 95-1228).

[107] United States v. Wells, 117 S. Ct. 921, 924 (1997).

[108] *Id.*

[109] *See, e.g.*, United States v. Brimberry, 779 F.2d 1339 (8th Cir. 1985).

statements material.[110] The jury subsequently found Wells and Steele each guilty of one count of conspiracy and one count of making a false statement.[111] The court sentenced them both to two years probation on each count, to run concurrently.[112]

While the defendants' appeal to the Eighth Circuit was pending, the United States Supreme Court decided *United States v. Gaudin*,[113] which held that when materiality is an element of the offense, it is an issue for the jury to decide.[114] The Eighth Circuit requested that the Government and Wells and Steele submit supplemental briefs on the applicability of the *Gaudin* ruling.[115] Wells and Steele argued that, pursuant to *Gaudin*, materiality is an element of § 1014 on which they were constitutionally entitled to a jury's determination.[116] The Government argued, for the first time, that materiality is not an element of the offense as defined in § 1014.[117] The Eighth Circuit concluded, consistent with precedent, that materiality is an element of § 1014,[118] and therefore vacated the convictions, remanding the case to the district court for a new trial.[119]

The Government appealed the Eighth Circuit decision, and the Supreme Court granted certiorari[120] to decide whether materiality is an element of the crime of knowingly making a false statement to a federally insured bank.

IV. THE SUPREME COURT OPINIONS

A. THE MAJORITY OPINION

Writing for the majority in an 8-1 decision,[121] Justice Souter vacated and remanded the Eighth Circuit's decision for further

---

[110] *Wells*, 117 S. Ct. at 924.

[111] *Id.*

[112] Brief for Respondents at 2, *Wells* (No. 95-1228).

[113] United States v. Gaudin, 515 U.S. 506 (1995).

[114] *Id.* at 509.

[115] *Wells*, 117 S. Ct. at 925.

[116] *Id.*

[117] *Id.*

[118] United States v. Wells, 63 F.3d 745, 750-51 (8th Cir. 1995) (relying on United States v. Ribaste, 905 F.2d 1140 (8th Cir. 1990)).

[119] *Id.* at 753.

[120] United States v. Wells, 116 S. Ct. 1540 (1996).

[121] Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, Thomas, Ginsburg and Breyer joined in Justice Souter's opinion.

proceedings consistent with the Court's opinion.[122] As a threshold matter, Justice Souter ruled that neither the Government's initial indictment of Wells and Steele for making false and "material" statements to a federally insured bank, nor the Government's requested jury instructions regarding materiality at the conclusion of the trial, precluded the Government from questioning (or the Court from addressing) the issue of whether materiality is an element of the offense.[123] Justice Souter then determined that the materiality of a false statement or report made to a federally insured bank is not an element under § 1014.[124] Finally, Justice Souter dismissed as unavailing the defendants' remaining arguments for affirming the Eighth Circuit's opinion.[125]

1. The Court's Ability to Address the Issue of Materiality

Justice Souter ruled that the Court properly could address whether materiality of falsehood is an element of the offense codified as 18 U.S.C. § 1014.[126] Respondents Wells and Steele advanced two arguments against the Court's determination of whether materiality is an element of § 1014.[127] First, they contended that Federal Rule of Criminal Procedure 30[128] foreclosed the Government's position on appeal that materiality is not an element.[129] Justice Souter rejected this argument by noting that the Government was not challenging the jury instruction in an attempt to assign error to the trial court.[130] Instead, the Government was asserting that its proposed instruction was "harmless surplusage," which had not affected the jury's deliberations.[131]

---

[122] United States v. Wells, 117 S. Ct. 921, 932 (1997).

[123] *Id.* at 925-26.

[124] *Id.* at 926-29.

[125] *Id.* at 929-32.

[126] *Id.* at 925-26.

[127] Brief for Respondents at 11, *Wells* (No. 95-1228).

[128] Federal Rule of Criminal Procedure 30 reads, in pertinent part: "No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection." FED. R. CRIM. P. 30 (1997).

[129] *Wells*, 117 S. Ct. at 925.

[130] *Id.*

[131] *Id.*

Second, Wells and Steele advanced the "law of the case"[132] and "invited error"[133] doctrines to support their claim that the Court was precluded from addressing the materiality issue.[134] Justice Souter acknowledged that several appellate courts have held that the "law of the case" doctrine prevents the Government from denying on appeal that a crime includes an element if the Government accepted instructions at trial which included a fact as an element of the offense.[135] Justice Souter also noted that the respondents were correct to assert that several appellate courts do not allow parties to complain on appeal about errors that the parties themselves invited or provoked the district court to commit.[136] However, Justice Souter determined that neither of these doctrines is sufficient to overcome the Court's traditional rule of reviewing all issues presented in a petition for certiorari, so long as each issue is "'pressed [in] or passed on' by the Court of Appeals."[137] Because the Eighth Circuit addressed the issue of a false statement's materiality as an element of § 1014, the Government was allowed to argue that issue before the Court.[138] Furthermore, when the Government drafted its indictment and jury instructions, it believed there was evidence sufficient to satisfy the Eighth Circuit's materiality requirement.[139] Only after the *Gaudin* decision did the Government have any reason to contest the need to demonstrate materiality; if materiality was not an element of the offense, the entire issue was moot.[140] Justice Souter therefore concluded that the Government was not disqualified from arguing the materiality issue before the Court.[141]

---

[132] According to Justice Souter, under the law of the case doctrine, "when the Government accepts jury instructions treating a fact as an element of an offense, the . . . doctrine precludes the Government from denying on appeal that the crime includes the element." *Id.*

[133] The "invited error" doctrine precludes a party from complaining on appeal about errors that the party invited or provoked the district court to commit. *Id.* (citing United States v. Sharpe, 996 F.2d 125, 129 (6th Cir. 1993)).

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.* at 925-26 (quoting United States v. Williams, 504 U.S. 36, 42 (1992)).

[138] *Id.* at 926.

[139] *Id.*

[140] *Id.*

[141] *Id.* at 925.

2. *The Materiality Issue*

Having set forth the Court's authority to hear the issue, Justice Souter discussed whether materiality is an element of a violation of § 1014.[142] First, Justice Souter looked to the text of § 1014,[143] and noted that the language of the statute does not require the subject of the false statement or report to be material to the application.[144] Rather, § 1014 criminalizes *any* false statement made to a federally insured bank.[145] Justice Souter further noted that the term "false statement" in § 1014 carries with it no "general suggestion of influential significance."[146] Accordingly, Justice Souter determined that, under a natural reading of the text of § 1014, materiality is not an element of the crime of making false statements to a federally insured lending institution.[147]

Second, Justice Souter addressed the respondents' contention that "false statement" possesses a common law implication of materiality which was incorporated into § 1014 upon codification.[148] Justice Souter acknowledged that some common law crimes involving false statements contained a materiality element.[149] Congress, however, codified those common law crimes in other sections of the federal criminal code and explicitly included materiality provisions.[150] Section 1014 itself consolidated thirteen previous statutory provisions relating to making false statements to financial institutions, which Congress did not include among the federal crimes containing a materiality element.[151] Justice Souter noted that, although "false statement" and "misrepresentation" were similar at common law, and "misrepresentation" had been held to contain a materiality element,

---

[142] *Id.*

[143] *See supra* note 9 for the pertinent text of 18 U.S.C. § 1014.

[144] *Wells*, 117 S. Ct. at 927.

[145] *Id.* (emphasis added).

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id. See, e.g.*, 18 U.S.C. § 1001 (1994) ("[W]hoever . . . knowingly and willfully falsifies, conceals or covers up . . . a material fact. . . ."); 18 U.S.C. § 1621 (1994) ("Whoever . . . willfully subscribes as true any material matter which he does not believe to be true. . . ."); 18 U.S.C. § 1623 (1994) ("Whoever under oath . . . makes any false material declaration. . .").

[151] *Wells*, 117 S. Ct. at 927. *See also supra* Section II.A.2.

it does not necessarily follow that both terms are identical in containing an implicit materiality requirement.[152]

Third, Justice Souter reviewed the statute's legislative history and determined that Congress did not intend for § 1014 to contain a materiality element.[153] Only three of thirteen earlier statutes aggregated in § 1014 had an express materiality requirement, while ten of the earlier provisions had no such requirement.[154] Justice Souter concluded that "[t]he most likely inference in these circumstances is that Congress deliberately dropped the term 'materiality' without intending materiality to be an element of § 1014."[155] To reach this conclusion, Justice Souter relied upon *Kay v. United States*, which examined one of the predecessor statutes of § 1014.[156] In *Kay*, the Court determined that it is irrelevant whether the statements made to a bank actually would influence the bank's decision to make a loan.[157] Rather, the relevant inquiry is whether the statements are false and are intended to mislead the lending institution.[158] Justice Souter interpreted *Kay* as holding that materiality is not an implied element of the offense of making false statements to a bank.[159] Because the *Kay* decision was announced a decade before Congress consolidated the statute at issue in *Kay* with twelve other statutes to create § 1014, Justice Souter assumed that Congress intended § 1014 to be read in conformity with the Court's decision in *Kay*.[160] Therefore, Justice Souter concluded that it was unlikely Congress viewed a materiality requirement as an implicit element of the § 1014 offense.[161]

3. The Respondents' Remaining Arguments

Finally, Justice Souter addressed the remaining arguments advanced by Wells and Steele.[162] In response to the respondents' contention that congressional inaction essentially ratified

---

[152] *Wells*, 117 S. Ct. at 927 n.10.
[153] *Id.* at 928.
[154] *Id.*
[155] *Id.*
[156] *Id.* at 928-29. *See also supra* Section II.A.1.
[157] Kay v. United States, 303 U.S. 1, 5 (1938).
[158] *Id.* at 5-6.
[159] *Wells*, 117 S. Ct. at 928.
[160] *Id.* at 929.
[161] *Id.*
[162] *Id.* at 929-32.

some appellate court holdings that materiality is an element of § 1014, Justice Souter warned that "finding any interpretive help in congressional behavior here is impossible."[163] Although Congress had not rejected those decisions when otherwise amending § 1014, it never disturbed the original phraseology of § 1014 specifically to include materiality.[164] Justice Souter believed "'it is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law.'"[165] In the present circumstances, Justice Souter found the respondents' argument particularly unconvincing because judicial opinion was divided on the issue of materiality.[166] Furthermore, the Court had not described materiality as an element of § 1014 when considering the statute in earlier cases.[167]

Next, Justice Souter rejected the respondents' reliance on the Reviser's Note to argue that § 1014 implicitly contains a materiality element.[168] Justice Souter dismissed as "simply wrong" the Reviser's assertion that Congress's consolidation of thirteen statutory provisions into § 1014 "was without change of substance."[169] Dropping the materiality requirement from the consolidated statute represented a significant change from three of the predecessor statutes.[170] Justice Souter based his conclusion upon the respondents' failure to cite "a single case holding that any of the predecessor statutes lacking a materiality requirement implicitly contained one," and Congress' inability to assume an implicit materiality requirement in the wake of the Court's decision in *Kay*.[171]

Third, Justice Souter denied the respondents' assertion that materiality should be read into §1014 to avoid punishing rela-

---

[163] *Id.* at 929.

[164] *Id.*

[165] *Id.* (quoting National Labor Relations Bd. v. Plasterers' Local Union No. 79, 404 U.S. 116, 129-30 (1971)).

[166] *Id.* at 930.

[167] *Id.*

[168] *Id.* The Reviser's Note to § 1014 reads in pertinent part: "Each of the 13 sections from which this section was derived contained similar provisions either relating to false representations and statements, or overvaluation of security, with respect to one or more of the named banks, agencies, or corporations." 18 U.S.C. § 1014 (Reviser's Note) (1994).

[169] *Wells*, 117 S. Ct. at 930 (quoting 18 U.S.C. § 1014 (Reviser's Note) (1994)).

[170] *Id.* *See supra* notes 32-39 for a discussion of the statutes consolidated into 18 U.S.C. § 1014 in 1948.

[171] *Wells*, 117 S. Ct. at 930.

tively trivial or innocent conduct.[172] According to Justice Souter, a statement made "for the purpose of influencing a bank" usually is not about something a banker would regard as inconsequential.[173] Ordinarily, demonstrating that a particular statement could influence a bank is crucial to showing that the false statement was made with the subjective intent of influencing that institution.[174] Therefore, Justice Souter concluded, a literal reading of § 1014 "will not normally take the scope of [the statute] beyond the limit that a materiality requirement would impose."[175]

Fourth, Justice Souter determined that the rule of lenity[176] was "no help" to the respondents.[177] Because Justice Souter already had determined that § 1014 contained no ambiguity, there was no need to apply the rule of lenity.[178]

In light of these conclusions, Justice Souter vacated the judgment of the Eighth Circuit and remanded the case for further proceedings consistent with the Court's opinion.[179]

B. JUSTICE STEVENS' DISSENT

In his dissent, Justice Stevens discussed three flaws in the majority's opinion.[180] First, because the majority misinterpreted the *Kay* opinion, the Court's reliance on that case was misplaced.[181] Justice Stevens believed the *Kay* Court never con-

---

[172] *Id.* at 931.

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] The rule of lenity states that where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant. The Court explained the policies underlying this rule in *United States v. Bass*:

> [A]mbiguity concerning the ambit of criminal statutes should be resolved in favor of lenity. . . . [T]wo policies . . . have long been part of our tradition. First, "a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." Second, because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity.

404 U.S. 336, 347-48 (1971) (citations omitted).

[177] *Wells*, 117 S. Ct. at 931.

[178] *Id.*

[179] *Id.*

[180] *Id.* at 932 (Stevens, J., dissenting).

[181] *Id.* (Stevens, J., dissenting). *See supra* notes 26-31 and accompanying text.

fronted the question of materiality, because the false statements made by Ms. Kay were unquestionably material.[182] Instead, the *Kay* Court addressed the difference between the concepts of materiality (whether the information could have played a role in the loan approval process) and reliance (whether the information did play a role in the process), and held that all material misstatements relied upon by the deceived decision-maker were criminal under the predecessor statute to § 1014.[183] Thus, Justice Stevens argued, the majority read the *Kay* decision too expansively.[184] Because *Kay* was not directly on point, Justice Stevens reasoned, it was of no use in determining the proper scope of § 1014.[185]

Justice Stevens also disagreed with Justice Souter's interpretation of the history of § 1014.[186] Specifically, Justice Stevens believed the revisers of § 1014 were correct in asserting that there had been no change of substance when Congress created § 1014.[187] Citing two pre-consolidation cases which held or assumed that the nonexplicit § 1014 predecessor statutes contained materiality requirements,[188] Justice Stevens argued that the revisers reasonably could have assumed that the newly codified § 1014 implicitly contained a materiality element.[189] In support of his conclusion that the revisers' omission of an express reference to materiality was not a "change of substance," Justice Stevens enumerated three additional points: (1) the common law assumed a materiality requirement in crimes involving false statements, which the Court has previously recognized;[190] (2) it is "farfetched" that Congress made a deliberate decision to include or to omit a materiality requirement every

---

[182] *Wells*, 117 S. Ct. at 932 (Stevens, J., dissenting).

[183] *Id.* (Stevens, J., dissenting).

[184] *Id.* at 933 (Stevens, J., dissenting).

[185] *Id.* at 932 (Stevens, J., dissenting).

[186] *Id.* at 933 (Stevens., J., dissenting).

[187] *Id.* (Stevens, J., dissenting). Justice Stevens believed that "a more plausible explanation" was that "the reviser was, in fact, correct." *Id.* (Stevens, J., dissenting).

[188] McClanahan v. United States, 12 F.2d 263 (7th Cir. 1926); United States v. Kreidler, 11 F. Supp. 402 (S.D. Iowa 1935). *See supra* notes 11-25 and accompanying text.

[189] *Wells*, 117 S. Ct. at 933 (Stevens, J., dissenting).

[190] *Id.* at 933-34 (Stevens, J., dissenting).

time it created a false statement offense;[191] and (3) because courts had a different view of statutory interpretation in 1948, it was reasonable for Congress and the revisers to assume that the courts would continue to assume the existence of the materiality requirement that had been a routine aspect of common law false statement litigation.[192]

In closing, Justice Stevens characterized the Court's textual analysis of § 1014 as unconvincing and overly broad.[193] As a result, Justice Stevens argued that the majority expanded the reach of §1014 well beyond its common law antecedents.[194] According to Justice Stevens, the Court's reasoning did not justify the conclusion that Congress intended to make immaterial false statements a felony.[195]

V. ANALYSIS

The Supreme Court reached the wrong conclusion in *United States v. Wells* for several reasons. First, the Court's interpretation of 18 U.S.C. § 1014 promotes absurd prosecutions, a result Congress certainly did not intend and one that ignores an accepted cannon of statutory interpretation.[196] The Court implicitly addressed the interpretation issue in *Williams*, a case the Court inadequately considered when deciding *Wells*.[197] Additionally, many of the assumptions upon which the *Wells* Court relied are incorrect. The *Kay*[198] decision does not offer the sup-

---

[191] *Id.* at 936 (Stevens, J., dissenting). Justice Stevens considered it far more likely that Congress assumed a materiality requirement would be implied wherever it was not explicit. *Id.* (Stevens, J., dissenting).

[192] *Id.* (Stevens, J., dissenting). According to Justice Stevens, that the vast majority of federal judges subsequently found an implicit materiality requirement in § 1014 confirmed this assumption. *Id.* (Stevens, J., dissenting).

[193] *Id.* at 937 (Stevens, J., dissenting).

[194] *Id.* (Stevens, J., dissenting). Justice Stevens believed that the majority's interpretation of § 1014 made a broad range of unremarkable conduct, such as disingenuously flattering a bank officer about his choice of a bow tie, a violation of federal law. Furthermore, the Court made unfounded empirical judgments that false statements are usually not about trivial matters, and that the Government rarely would be able to prove that nonmaterial statements were made for the purpose of influencing a decision. *Id.* (Stevens, J., dissenting).

[195] *Id.* (Stevens, J., dissenting).

[196] *See supra* notes 54-71 and accompanying text.

[197] Williams v. United States, 458 U.S. 279 (1982). *See supra* notes 44-53 and accompanying text.

[198] Kay v. United States, 303 U.S. 1 (1938). *See supra* notes 26-31 and accompanying text.

port the Court attached to it. Furthermore, by not examining the *Kreidler*[199] and *McClanahan*[200] decisions, the Court overlooked two cases which clearly demonstrate that federal courts routinely had implied a materiality element under two of § 1014's predecessor statutes.[201]

A. THE COURT SHOULD HAVE APPLIED THE ABSURD RESULT PRINCIPLE

1. Application of the Principle

Justice Souter erred in failing to look beyond the plain meaning of 18 U.S.C. § 1014's language.[202] Indeed, the *American Trucking* decision directs a court to go further than the literal words of a statute.[203] When construing a statute, a court also must look to the potential result of that construction.[204] If the interpretation will lead to an absurd result, the court should look to the purpose of the statute.[205] Even if the result is not absurd, but merely unreasonable, sometimes the court must adhere to the underlying purpose of a statute rather than the literal words.[206] Had Justice Souter followed precedent established in *American Trucking* and its forebears, he undoubtedly would have reached a more reasonable conclusion in *Wells.* Furthermore, the Court may not pick and choose among its precedents.[207] The *American Trucking* decision clearly delineated the path the Court should have followed when giving a statute a natural reading. Because the Court did not follow precedent, the result is a conclusion which can only be described as absurd.

---

[199] United States v. Kreidler, 11 F. Supp. 402 (S.D. Iowa 1935). *See supra* notes 19-25 and accompanying text.

[200] McClanahan v. United States, 12 F.2d 263 (7th Cir. 1926). *See supra* notes 11-18 and accompanying text.

[201] *See supra* notes 11-25 and accompanying text.

[202] United States v. Wells, 117 S. Ct. 921, 926-27 (1997). *See also supra* notes 122-79 and accompanying text.

[203] United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940).

[204] *See id.*

[205] *See id.*

[206] *See id.* The Court recognized this principle as early as 1819. *See* Sturges v. Crowninshield, 17 U.S. 122, 202-03 (1819).

[207] The Court follows the principle of *stare decisis* when deciding cases. As Justice Brandeis explained, "*Stare decisis* is usually the wise policy," because "[t]he Court bows to the lessons of experience and the force of better reasoning . . . ." Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 405-08 (1932) (Brandeis, J., dissenting).

As Justice Stevens noted in his dissent, the Court's holding leaves open the possibility that a trivial remark made during the loan application process will result in a "draconian" punishment.[208] All lies intended to encourage a favorable outcome on a loan application, including mere flattery, are now "punishable by up to 30 years in prison, a fine of up to $1,000,000, 'or both.'"[209] For example, a homeowner who considers a bank loan officer's bow tie ugly, yet nevertheless compliments him on his good taste, is now criminally liable under § 1014.[210] Justice Stevens noted:

> As now construed, § 1014 covers false explanations for arriving late at a meeting, false assurances that an applicant does not mind if the loan officer lights up a cigar, false expressions of enthusiasm about the results of a football game or an election, as well as false compliments about the subject of a family photograph. So long as the false statement is made "for the purpose of influencing" a bank officer, it violates § 1014.[211]

The only false statement count on which the defendants in *Wells* ultimately were convicted alleged that Wells and Steele had signed their wives' signature on personal loan guarantees.[212] The jury convicted the two men on that charge only after hearing a jury instruction that such conduct was "material."[213] Surely Congress did not mean to equate such a common practice with felonious conduct, particularly in a situation where the defendants had a good faith belief in their authority to do so.[214] Yet, the *Wells* Court concluded that Congress meant just that.[215]

In arriving at the conclusion that there is no materiality requirement under § 1014, the Court ignored its own precedent and misconstrued congressional intent. While Justice Souter correctly stated that the Court had "previously described the elements of § 1014 without any mention of materiality" in the *Williams* case,[216] he ignored the Court's strong reluctance to criminalize trivial behavior.[217] The *Williams* Court recognized that making "a surprisingly broad range of unremarkable con-

---

[208] United States v. Wells, 117 S. Ct. 921, 932 (1997) (Stevens, J., dissenting).

[209] *Id.* (Stevens, J., dissenting) (quoting 18 U.S.C. § 1014).

[210] *See id.* at 936 n.14 (Stevens, J., dissenting); *see also supra* note 194.

[211] *Wells*, 117 S. Ct. at 932-33 (Stevens, J., dissenting).

[212] United States v. Wells, 63 F.3d 745, 748 (8th Cir. 1995).

[213] *Wells*, 117 S. Ct. at 924.

[214] *Wells*, 63 F.3d at 748.

[215] *Wells*, 117 S. Ct. at 932 (Stevens, J., dissenting).

[216] *Id.* at 930.

[217] Williams v. United States, 458 U.S. 279, 286-87 (1982).

duct a violation of federal law" was not what Congress intended when it promulgated § 1014.[218] While a particular construction might make sense in the context of a particular case, the Court in *Williams* cautioned against such a construction if it would have far-reaching implications.[219] The *Williams* decision thus strongly contradicts the absurd result that the Court reached in *Wells*. The *Wells* Court should have concluded that materiality was a requirement under § 1014, thereby removing unremarkable conduct from the scope of the statute.

2. *Ramifications of the* Wells *Holding*

The impact of the *Wells* decision extends far beyond future § 1014 prosecutions. At its most basic, the Court's holding in *Wells* means that courts may not imply a materiality requirement in any federal false statement statute that lacks an explicit materiality requirement.[220] Some of these false statement statutes clearly do not call for a materiality requirement, because there would be no opportunity for a person to supply immaterial false information.[221] For example, it is a crime to willfully and knowingly make a false statement in a passport application.[222] Citizens may apply for a passport only by completing a specific application form, which requires the applicant to provide a wide range of personal information all of which is material to the determination that the applicant is a United States citizen entitled to a passport.[223] Therefore, there is no need for this statute to contain an explicit materiality requirement.[224]

On the other hand, § 1014 provides an unusually outrageous example of the types of immaterial behavior that are now federal offenses.[225] Other false statement statutes may be similarly sweeping if interpreted as broadly as § 1014 was in *Wells*.

---

[218] *Id.* at 286.

[219] *See id.* at 286-87.

[220] *See Wells*, 117 S. Ct. at 929 (holding that when interpreting a statute, congressional silence should not be construed as adoption of a controlling rule of law).

[221] *See, e.g.*, 18 U.S.C. § 1542 (1994) (providing in pertinent part "[w]hoever willfully and knowingly makes any false statement in an application for passport . . . [s]hall be fined not more than $2,000 or imprisoned not more than five years, or both.").

[222] *Id.*

[223] *Id.*

[224] *Id.*

[225] *See supra* text accompanying note 211.

For example, a dairy company that advertises its milk products as "creamy and delicious" is now federally criminally liable if through an objective determination that claim is proven to be false.[226] In another example, a person applying for workers' compensation benefits who makes a false statement may be held criminally liable, regardless of the relevancy of his statement.[227] Neither of these provisions contains an explicit materiality requirement. Yet, as a result of the Court's decision in *Wells*, such statements are now federal criminal offenses because courts may not read a materiality requirement into a statute that lacks such a requirement. The number of false statement crimes has grown exponentially, and now includes virtually every statement imaginable in the context of transactions governed by these anti-fraud provisions. It is highly unlikely that Congress intended all such behavior to constitute a crime.[228]

Justice Souter did not seriously address the consequence that absurd cases might be prosecuted under the Court's expansive reading of § 1014.[229] Indeed, Justice Souter argued that a literal reading of the statute would not take § 1014 beyond the scope that a materiality requirement would impose.[230] Unfortunately that is not true: A literal application of § 1014 *would* authorize the prosecution of false statements that are not material.[231] In dissent, Justice Stevens noted that the Court, quite correctly, did not rely upon the discretion of prosecutors to avoid frivolous prosecutions.[232] Rather than offering a realistic or compelling means of ensuring that absurd cases will not be prosecuted, however, the Court "made an empirical judgment that false statements will not 'usually' be about a trivial matter."[233] The Court did not address those apparently rare instances in which an immaterial false statement was made for the

---

[226] *See* 7 U.S.C. § 6407(e) (1994) (barring "false or unwarranted statements" regarding fluid milk products).

[227] *See* 33 U.S.C. § 931 (1994) (penalizing false statements for purpose of obtaining workers' compensation benefit).

[228] United States v. Wells, 117 S. Ct. 921, 938 (1997) (Stevens, J., dissenting).

[229] *See id.* at 931.

[230] *Id.*

[231] *See* 18 U.S.C. § 1014 (1996).

[232] *Wells*, 117 S. Ct. at 938 (Stevens, J., dissenting).

[233] *Id.* (Stevens, J., dissenting).

purpose of influencing a decision.[234] The easiest solution for the Court would have been to impose a materiality requirement.

B. THE COURT MISINTERPRETED PRECEDENTS

1. Kay v. United States *Did Not Address the Materiality Issue.*

Contrary to Justice Souter's conclusion,[235] the Supreme Court's decision in *Kay v. United States*[236] does not preclude a determination that there is an implied materiality element in § 1014 for two reasons. First, the *Kay* Court did not address whether materiality was an implicit element of the offense of making false statements under the Home Owners' Loan Act, 12 U.S.C. § 1467(a).[237] Instead, the Court determined that providing false information to a bank is a crime regardless of whether the bank ultimately relies upon that false information to make its decision on a loan application.[238] While the Court correctly presumed that Congress follows Supreme Court holdings,[239] the Court incorrectly concluded that, because of the *Kay* decision, "Congress could not . . . assume[] that a materiality element was implicit in a comparable statute that was silent on the issue."[240] Because the Court did not directly address materiality in *Kay*, Congress had no reason to believe that courts would not continue to imply an absent materiality requirement in the newly-created § 1014. *Kay*, therefore, does not stand in the way of a conclusion that Congress deemed an express materiality requirement as redundant.

Second, although the *Wells* Court stated that "no one reading *Kay* could reasonably have assumed that criminal falsity presupposed materiality,"[241] the *Kay* Court did, in fact, presuppose materiality when it examined a violation of the Home Owners' Loan Act.[242] The materiality of the false statements at issue in

---

[234] *Id.* at 931.

[235] *Id.* at 929.

[236] 303 U.S. 1 (1938). *See supra* notes 26-31 and accompanying text.

[237] *Kay*, 303 U.S. at 5. In *Kay* there was no dispute about the materiality of the false statements made by the defendant.

[238] *Id.*

[239] *See, e.g.*, North Star Steel Co. v. Thomas, 515 U.S. 29 (1995).

[240] *Wells*, 117 S. Ct. at 930.

[241] *Id.* at 929.

[242] *Kay*, 303 U.S. at 5. *See also supra* notes 26-31 and accompanying text.

Kay was recognized by both sides.[243] The *Kay* Court implied that no one would make an unimportant false statement to a bank, and therefore all false statements are material.[244] While that implication seems somewhat overstated, it is nevertheless true that *Kay* can be construed to mean that the court would only entertain prosecutions under the Home Owners' Loan Act that involved material false statements.[245] Therefore, it was wrong for Justice Souter to cite *Kay* as support for the proposition that a materiality requirement must be explicit, when the *Kay* decision itself implies that only material false statements were illegal under one of § 1014's predecessor statutes.

2. *The Court Incorrectly Ignored its Decisions in* McClanahan *and* Kreidler

The Reviser Note to § 1014 concludes that "[t]he consolidation [of the thirteen predecessor statutes] was without change of substance. . . ."[246] Although Justice Souter characterized that conclusion as "simply wrong,"[247] the history of § 1014's predecessor statutes is not so simple. Given the lack of an express materiality requirement in § 1014, and the history of courts implying such an element, there can be no doubt that the Reviser's Note is correct and Congress intended for a materiality element to be implied in § 1014.[248]

Justice Souter summarily rejected Justice Stevens's notion that *McClanahan v. United States*[249] and *United States v. Kreidler*[250] offer compelling insight into the implied materiality requirements of two of § 1014's predecessors.[251] Justice Souter argued that because neither case specifically held that materiality is an implied element of those statutes, the two cases were irrelevant to a discussion of § 1014.[252] Far more telling than the holdings themselves, however, is the cavalier attitude toward materiality

---

[243] *Kay*, 303 U.S. at 5.
[244] *Id.* at 6.
[245] *See id.*
[246] *See* 18 U.S.C. § 1014 (Reviser's Note) (1994).
[247] United States v. Wells, 117 S. Ct. 921, 930 (1997).
[248] *See* 18 U.S.C. § 1014 (Reviser's Note) (1994).
[249] 12 F.2d 263 (7th Cir. 1926).
[250] 11 F. Supp. 402 (S.D. Iowa 1935).
[251] *Wells*, 117 S. Ct. at 930.
[252] *Id.*

taken by the *Kreidler* and *McClanahan* courts.[253] Both courts simply assumed that prosecutions under false statement statutes would proceed only in instances where the allegedly false statements were material to the loan application.[254] The *Kreidler* court assumed that an immaterial false statement would be insufficient to support a charge of violating the statute.[255] The *McClanahan* court did not address the materiality issue because there was no doubt that the false statements made by the defendant were material.[256] The *McClanahan* court did, however, determine that if "the false statements charged and proved were wholly frivolous and unrelated, it would in all probability be concluded that that they did not supply the basis for a prosecution" under the statute at issue.[257] The *Kreidler* and *McClanahan* decisions thus clearly demonstrate that courts were routinely implying a materiality element under predecessors to § 1014.

More importantly, however, these cases make insupportable several of the propositions advanced by the *Wells* Court. The *Kreidler* and *McClanahan* decisions directly rebut Justice Souter's contention that Congress could not have assumed that a materiality element is implied in a statute silent on the issue.[258] Furthermore, the *Kay* decision did not preclude Congress from assuming that a materiality element is implicit.[259] In fact, Congress could have assumed the exact opposite: there is no need for an explicit materiality requirement because courts routinely imply such an element when addressing false statement cases.[260] Because courts implied a materiality element in predecessor statutes, it was wholly proper for the Reviser of § 1014 to regard the consolidation of thirteen statutes into one statute without an express materiality provision as a "consolidation without change of substance."[261] That the implied materiality elements in *Kreidler* and *McClanahan* were not appealed lends credence to the theory that implication of a materiality element was a widely

---

[253] *See supra* notes 11-25 and accompanying text.

[254] *See McClanahan*, 12 F.2d at 264; *Kreidler*, 11 F. Supp. at 403; *see also supra* notes 11-25 and accompanying text.

[255] *Kreidler*, 11 F. Supp. at 403.

[256] *McClanahan*, 12 F.2d at 264.

[257] *Id.*

[258] United States v. Wells, 117 S. Ct. 921, 930 (1997).

[259] *See supra* notes 26-31 and accompanying text.

[260] *See, e.g.*, *McClanahan*, 12 F.2d at 264; *Kreidler*, 11 F. Supp. at 403.

[261] *See* 18 U.S.C. § 1014 (Reviser's Note) (1994).

accepted practice before the 1948 consolidation.[262] *Kreidler* and *McClanahan* thus refute the Court's assertion that the Reviser was wrong, and therefore deprive Justice Souter of one of his most important arguments.

VI. CONCLUSION

In *United States v. Wells,* the Supreme Court incorrectly determined that materiality is not an element of the offense of making a false statement to a federally insured bank. First, the Court should have invoked the absurd result principle to draw a distinct boundary between criminal and non-criminal behavior. The Court should have taken a results-oriented approach to the decision and recognized that its holding has the effect of federally criminalizing trivial behavior. The Court could have avoided this problem only by concluding that materiality was an implicit element of the offense. Furthermore, the Court should have examined its precedents and the history of 18 U.S.C. § 1014 to determine that materiality was routinely assumed to be an element of § 1014's predecessor statutes. As a result of the Court's decision, inconsequential behavior is now punishable by draconian penalties.

BRADFORD R. HISE

[262] *McClanahan,* 12 F.2d at 264; *Kreidler,* 11 F. Supp. at 403.