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The Supreme Court's Interpretation of the Word Willful: Ignorance of the Law as an Excuse to Prosecutions for Structuring Currency Transactions

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THE SUPREME COURT'S INTERPRETATION OF THE WORD "WILLFUL": IGNORANCE OF THE LAW AS AN EXCUSE TO PROSECUTIONS FOR STRUCTURING CURRENCY TRANSACTIONS

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

I. INTRODUCTION

In *Ratzlaf v. United States*,[1] the United States Supreme Court held that to establish a "willful" violation of the federal statutes that prohibit the structuring of currency transactions, the government must prove that the defendant had knowledge that his conduct was illegal.[2] Structuring occurs when an individual breaks up a sum greater than $10,000 into more than one transaction of smaller amounts for the purpose of evading the federal reporting requirements.[3] These reporting requirements mandate financial institutions to file a Currency Transaction Report with the Secretary of the Treasury for all cash transactions exceeding $10,000.[4] The dissent disagreed with the majority's interpretation of the term "willful," concluding that the federal structuring statutes require the defendant to have knowledge of the reporting requirement and an intent to evade the filing of a report.[5] Contrary to the majority, the dissent did not interpret "willful" to require knowledge on the part of the defendant of the illegality of his conduct.[6]

The defendant in *Ratzlaf* was charged with breaking up a $160,000 cash transaction into several smaller transactions of under $10,000 in violation of 31 U.S.C. §§ 5313, 5322, and 5324.[7] The United States Supreme Court reversed the ruling of the Ninth Circuit

1 114 S. Ct. 655 (1994).
2 *Ratzlaf*, 114 S. Ct. at 657.
3 31 C.F.R. 103.11(p) (1993).
4 31 U.S.C. § 5313 (1988).
5 *Ratzlaf*, 114 S. Ct. at 664-65 (Blackmun, J., dissenting).
6 *Id.*
7 *See id.* at 657.

Court of Appeals, finding that defendants are guilty of violating the federal anti-structuring provisions only if they act with knowledge that structuring is prohibited by law.[8]

This Note argues that the majority chose the wrong definition of the term "willful" and that the dissent's interpretation of the mental state necessary for a "willful" violation of the anti-structuring statute is correct. The dissent's interpretation is preferable because it is consistent with lower court holdings and with legislative history, and precludes the use of an ignorance of law defense. In addition, the dissent correctly concluded that structuring is not an innocent activity; it implies that the defendant knew of the reporting requirement and intended to evade it.

Finally, the dissent's interpretation of the anti-structuring statute is preferable because the majority's interpretation renders prosecutorial victories impossible. Thus, to put any bite back into the law prohibiting the structuring of currency transactions, Congress would have to amend the statutes once again—which it has recently done. In the fall of 1994, Congress passed legislation which changed the mens rea necessary for a violation of currency structuring from "willful" to "knowingly," thereby effectively nullifying the Supreme Court's holding in *Ratzlaf*.

II. BACKGROUND

A. THE HISTORY OF THE 1970 ANTI-STRUCTURING STATUTE AND THE COURT'S INTERPRETATION

In 1970, concerned with the increased use of cash in criminal activities,[9] Congress passed the Currency and Foreign Transactions Reporting Act (Act).[10] Part of the Bank Secrecy Act, the Act provided that a domestic financial institution[11] must file a currency transaction report (CTR) with the Secretary of the Treasury whenever it is involved in a cash transaction of more than $10,000.[12] Any institution

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8 *Id.* at 658.

9 *See* H.R. REP. No. 975, 91st Cong., 2d Sess. 10 (1970); S. REP. No. 1139, 91st Cong., 2d Sess. 2-4 (1970).

10 Bank Secrecy Act, Pub.L. No. 91-508, Tit. II, 84 Stat. 1114 (1970) (codified as amended in scattered sections of 12 U.S.C., 15 U.S.C., and 31 U.S.C.).

11 31 C.F.R. § 103.11(i) (1993) defines "financial institution" to include banks, securities dealers, currency exchanges, fund transmitters, telegraph companies, casinos, and any institution subject to state or federal banking authority.

12 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

that "willfully" violates the Act's reporting requirements, as set forth in 31 U.S.C. § 5313(a), was subject to criminal penalties under 31 U.S.C. § 5322(a).[13] Structuring occurs when an individual breaks up a sum larger than $10,000 into more than one transaction of smaller amounts for the purpose of evading the federally mandated reporting requirements.[14]

Problems in prosecutions arose under the 1970 Act, because the Act required banks and not individuals to file reports for currency transactions exceeding $10,000.[15] Thus, an individual who structured a currency transaction was not liable under the specific provision of 31 U.S.C. § 5322. Appellate courts split as to whether courts could hold an individual responsible under *any* federal provision for causing a bank to fail to file a CTR.[16] The split among circuits is exemplified by cases from the Eleventh and First Circuits. In *United States v. Tobon-Builes*,[17] the Eleventh Circuit held that an individual who "willfully" structures currency transactions to be under $10,000 so that a bank fails to file a CTR is guilty of false representation and concealment of fact to the federal government under 18 U.S.C. § 1001.[18] The defendant in *Tobon-Builes* used various false names and converted $185,200 into twenty-one separate cashier's checks, each in amounts less than $10,000, at eleven different banks.[19] The court concluded that the defendant's conduct was "willful" and therefore culpable, because the evidence "clearly established" both his knowledge of the reporting re-

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shall file a report on the transaction at the time and in the way the Secretary prescribes. . . .

31 C.F.R. § 103.22(a)(1) (1993) sets this amount at $10,000.

13 31 U.S.C. § 5322 (1988). 31 U.S.C. § 5322(a) reads: "A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than $250,000, or imprisoned for not more than five years, or both."

14 31 C.F.R. 103.11(p) (1993).

15 *See* H.R. REP. NO. 746, 99th Cong., 2d Sess. 18-19 (1986); S. REP. NO. 433, 99th Cong., 2d Sess. 22 (1986).

16 For cases refusing to convict a defendant for structuring, see, for example, United States v. Mastronardo, 849 F.2d 799 (3d Cir. 1988); United States v. Gimbel, 830 F.2d 621 (7th Cir. 1987); United States v. Larson, 796 F.2d 244 (8th Cir. 1986); United States v. Dela Espriella, 781 F.2d 1432 (9th Cir. 1986); United States v. Varbel, 780 F.2d 758 (9th Cir. 1986); United States v. Denemark, 779 F.2d 1559 (11th Cir. 1986); United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985). For cases convicting a defendant for structuring, see, for example, United States v. American Investors of Pittsburgh, Inc., 879 F.2d 1087 (3d Cir. 1989), *cert. denied*, 493 U.S. 1021 (1990); United States v. Nersesian, 824 F.2d 1294 (2d Cir. 1987), *cert. denied*, 484 U.S. 1061 (1988); United States v. Richeson, 825 F.2d 17 (4th Cir. 1987); United States v. Heyman, 794 F.2d 788 (2d Cir.), *cert. denied*, 479 U.S. 989 (1986); United States v. Tobon-Builes, 706 F.2d 1092 (11th Cir.1983); United States v. Thompson, 603 F.2d 1200 (5th Cir. 1979).

17 706 F.2d 1092 (11th Cir. 1983).

18 *Tobon-Builes*, 706 F.2d at 1096, 1101.

19 *Id.* at 1094.

quirement and his intent to cause a financial institution to fail to file a report.[20]

In contrast, in *United States v. Anzalone*,[21] the First Circuit held that a defendant who purchased three checks, each under $10,000, from a bank on one occasion and later purchased $75,000 worth of checks, again in amounts under $10,000, over a three week period, was not guilty of structuring currency transactions.[22] All of the defendant's checks went to a stock brokerage firm to pay for bonds purchased for the wife and mother of a public official.[23] Because the defendant was under no duty to report his transactions, the court concluded that he could not be guilty under 18 U.S.C. § 1001 for false representation of a material fact to the federal government.[24]

B. THE HISTORY OF THE 1986 ANTI-STRUCTURING STATUTE AND THE COURT'S INTERPRETATION

Recognizing the split among the circuits and the difficulty in prosecuting violators of the 1970 Act, Congress once again confronted the problem of money laundering in 1986.[25] Section 5313(a)'s requirement that an institution file a CTR for a currency transaction greater than $10,000 and § 5322(a)'s imposition of criminal penalties for a "willful" violation of § 5313 were not enough on their own to sustain a conviction against individuals who structured currency transactions to avoid the federal reporting requirements.[26] Thus, to increase compliance with the reporting requirements, Congress passed a new criminal anti-structuring statute, 31 U.S.C. § 5324, as part of the Money Laundering Act of 1986.[27] This new anti-structuring statute explicitly prohibits an individual from structuring a financial transaction to evade the 31 U.S.C. § 5313(a) reporting requirement and imposes criminal penalties on individuals who "willfully" violate this prohibition.[28]

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20 *Id.* at 1101.

21 766 F.2d 676 (1st Cir. 1985).

22 *See id.* at 679, 682.

23 *Id.* at 679.

24 *Id.* at 682.

25 H.R. REP. No. 746, 99th Cong., 2d Sess. 18-19 (1986); S. REP. No. 433, 99th Cong., 2d Sess. 22 (1986).

26 *Id.*

27 31 U.S.C. § 5324 (1988). The relevant text of 31 U.S.C. § 5324 states: "No person shall for the purpose of evading the reporting requirements of 5313(a)... (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions."

28 31 U.S.C. § 5313(a) states:

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

Thus, § 5313 prohibits structuring currency transactions in under $10,000 amounts to avoid the federal reporting requirement; § 5322 imposes criminal penalties on anyone "willfully" failing to file such a report; and § 5324 explicitly prohibits an individual from causing a financial institution to fail to file a report.

In debating the new amendment to the Act, both the House and the Senate explicitly indicated that by creating § 5324 they intended to hold individuals liable for causing a financial institution to fail to file a CTR.[29] Specifically, Congress intended the enactment of § 5324 to resolve the jurisdictional split by codifying the decision in *Tobon-Builes*, which imposed criminal liability on individuals who "willfully" structure currency transactions to evade the federal reporting requirement.[30]

The Senate attempted to clarify the type of activity that warrants a conviction under the anti-structuring statute by offering an example of conduct which satisfies the "willful" requirement.[31] According to the Senate Committee on the Judiciary Report:

> a person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions, would be subject to potential civil and criminal liability.[32]

C. PROBLEMS IN INTERPRETING THE 1986 ANTI-STRUCTURING AMENDMENTS

Despite Congress' efforts to reduce confusion and to increase the number of prosecutions of structured currency transactions, not all courts agreed with the Eleventh Circuit's conclusion in *Tobon-Builes* that defendants can be convicted under § 5322 for "willfully" structuring currency transactions without specific knowledge that they are violating the law.[33] In *United States v. Aversa*,[34] the First Circuit

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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.

29 *See supra* note 25.

30 *See supra* note 25.

31 S. REP. No. 433, 99th Cong., 2d Sess. 22 (1986).

32 *Id.*

33 *See, e.g.*, United States v. Aversa, 984 F.2d 493 (1st Cir. 1993) (en banc), *cert. granted* and *judgment vacated sub nom.* Donovan v. United States, 114 S. Ct. 873 (1994) (term "willful" in reporting requirement statute requires knowledge of reporting requirement and specific intent to commit the crime of structuring); United States v. Rigdon, 874 F.2d 774 (11th Cir.), *cert. denied*, 493 U.S. 958 (1989) (same); United States v. Bank of New England, N.A., 821 F.2d 844 (1st Cir.), *cert. denied*, 484 U.S. 943 (1987) (same); United States v.

considered the state of mind required for a "willful" violation under § 5322.[35] Defendants Aversa and Mento structured a series of deposits in increments under $10,000, so one of their wives would not discover the transactions during divorce proceedings.[36] The court held that in the context of the anti-structuring statute, a "willful action is one committed in violation of a known legal duty or in consequence of a defendant's reckless disregard of such a duty."[37] Furthermore, the First Circuit stated that "an unintentional, nonreckless mistake of law is a complete defense to a structuring charge."[38] Because neither of the defendants was able to offer a defense showing that he had no knowledge that structuring was illegal, the Court of Appeals had no way of determining whether the defendants met the "willfulness" requirement. Based on this interpretation, the court determined that the defendants were entitled to a rehearing to decide whether they had knowledge of the reporting requirements or recklessly disregarded those requirements.[39]

Contrary to the First Circuit's line of reasoning, the Second Circuit held in *United States v. Scanio*[40] that the government need not prove that the defendant had knowledge of the reporting requirement law to satisfy the "willfulness" requirement of 31 U.S.C. § 5322.[41] Rather, to convict a defendant for a "willful" violation of the anti-structuring provision, the government must prove that the defendant knew that the bank had to file a report for currency transactions greater than $10,000 and that the defendant intended to evade the filing of this report.[42] Scanio attempted to pay off his $13,101.17 credit card debt by depositing cash in that amount into his account.[43] A teller informed him of the bank's obligation to report his $13,101.17 cash

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Speer, 824 F. Supp. 111 (W.D. Ky. 1993) (mem. opinion) (same); *cf.* United States v. Shirk, 981 F.2d 1382 (3d Cir. 1993), *cert. granted* and *judgment vacated*, 114 S. Ct. 873 (1994) ("willfulness" proven by defendant's knowledge of reporting requirement and intent to evade that requirement; additional knowledge that structuring was illegal is not necessary); United States v. Dollar Bank Money Market Account No. 1591768456, 980 F.2d 233 (3d Cir. 1992) (same); United States v. Wollman, 945 F.2d 79 (4th Cir. 1991) (same); United States v. Hoyland, 914 F.2d 1125 (9th Cir. 1990) (same); United States v. Scanio, 900 F.2d 485 (2d Cir. 1990) (same).

34 984 F.2d 493 (1st Cir. 1993) (en banc), *cert. granted* and *judgment vacated sub nom.* Donovan v. United States, 114 S. Ct. 873 (1994).

35 *Id.* at 494.

36 *Id.* at 495.

37 *Id.* at 502.

38 *Id.* at 500.

39 *Id.* at 502.

40 900 F.2d 485 (2d Cir. 1990).

41 *Id.* at 490-91.

42 *Id.* at 491.

43 *Id.* at 486.

transaction; thus, Scanio decided to lower the amount of his deposit to $9,500 and to return to the bank the following day to deposit the remaining cash.[44] Based on these facts, the court determined that Scanio "willfully" violated § 5322 because he had knowledge of the bank's reporting obligations and intentionally evaded the filing of a report by restructuring his transaction to amounts under $10,000 over a two day period.[45]

D. COURTS' INTERPRETATION OF THE TERM "WILLFULLY" IN §§ 5313, 5314, AND 5316

The Currency and Foreign Transaction Reporting Act requires individuals and financial institutions to report both domestic and foreign transactions. These provisions are codified in 31 U.S.C. §§ 5311-5325. Just as appellate courts have disputed the meaning of the "willfulness" requirement of 31 U.S.C. § 5322, they have also disputed the meaning of that term within the context of §§ 5313,[46] 5314,[47] and 5316.[48] Courts have disagreed about whether these statutes require knowledge of the reporting requirement and an intent to evade the filing of a report, or whether they require actual knowledge of the existence of a law prohibiting the specified conduct (knowledge of a

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44 *Id.* at 486-87.

45 *Id.* at 490.

46 31 U.S.C. § 5313, titled "Reports on domestic coins and currency transactions," states:

> 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. . .

47 31 U.S.C. § 5314, titled "Records and reports on foreign financial agency transactions," states:

> [T]he Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when a resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.

48 31 U.S.C. § 5316, titled "Reports on exporting and importing monetary instruments," states:

> [A] person or an agent or bailee of the person shall file a report. . . when the person, agent, or bailee knowingly—
> (1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—
> (A) from a place in the United States to or through a place outside the United States; or
> (B) to a place in the United States from or through a place outside the United States; or
> (2) receives monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States.

known legal duty).[49]

Courts have interpreted "willfulness" as it applies to § 5313 to require knowledge of the reporting requirement and an intent to evade those requirements.[50] In *United States v. Bank of New England, N.A.*,[51] the First Circuit found that to be guilty of "willfully" failing to file a CTR under § 5313, a defendant must have knowledge of the reporting requirement and act with the specific intent to prevent such a report from being filed.[52] The defendant, a bank, failed to file reports when one of its regular customers repeatedly withdrew over $10,000 in cash by using several separate cashier's checks in a single visit to a single teller, with each check not exceeding $10,000.[53] Despite the bank's claim that its failure to report the customer's transactions was not "willful," the court concluded that the teller's knowledge that reports were required for these transactions and the teller's recognition of the customer's suspicious conduct was enough to find that the bank acted "willfully" under § 5313.[54]

Courts interpreting § 5314 have interpreted "willful" to require more than just knowledge of the reporting requirement and an intent to evade the filing of a report.[55] In *United States v. Sturman*,[56] the Sixth Circuit found that for a "willful" violation of § 5314, a defendant must have knowledge of a known legal duty.[57] Defendant Sturman, a businessman engaged in the production, sale, and distribution of sexually explicit books and tapes, concealed his signature authority, his interests in various transactions, and his interest in corporations by transferring cash to foreign banks.[58] The court rejected Sturman's claim that the prosecution failed to prove that he had knowledge of the reporting law.[59] Based on evidence that Sturman hid or destroyed

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49 *See, e.g.*, United States v. Bank of New England, N.A., 821 F.2d 844, 854 (1st Cir.), *cert. denied*, 484 U.S. 943 (1987) (a "willful" violation of § 5313 requires knowledge of the reporting requirement and an intent to evade); United States v. Eisenstein, 731 F.2d 1540, 1543 (11th Cir. 1984) (same); United States v. Dichne, 612 F.2d 632, 636 (2d Cir. 1979), *cert. denied*, 445 U.S. 928 (1980) (same for § 5316); *cf.* United States v. Sturman, 951 F.2d 1466, 1476-77 (6th Cir. 1991), *cert. denied*, 112 S. Ct. 2964 (1992) ("willful" violation of § 5314 requires knowledge of a known legal duty); United States v. Warren, 612 F.2d 887, 889-90 (5th Cir.), *cert. denied*, 446 U.S. 956 (1980) (same for § 5316).

50 *See Bank of New England*, 821 F.2d at 854; United States v. Eisenstein, 731 F.2d 1540, 1543 (11th Cir. 1984).

51 Bank of New England, 821 F.2d at 854.

52 *Id.* For the text of § 5313, see *supra* note 46.

53 *Id.* at 848.

54 *Id.* at 857.

55 For the text of § 5314, see *supra* note 47.

56 951 F.2d 1466 (6th Cir. 1991), *cert. denied*, 112 S. Ct. 2964 (1992).

57 *Id.* at 1476.

58 *Id.* at 1471, 1476.

59 *Id.* at 1476-77.

documents requested by a grand jury subpoena and failed to read the section outlining responsibilities for reporting foreign bank transactions cross referenced in his income tax return, the Sixth Circuit found him guilty of "willfully" failing to report his transactions with foreign financial institutions under § 5314.[60]

Courts are split as to the intent necessary for a conviction under § 5316.[61] According to the Second Circuit in *United States v. Dichne*,[62] § 5316 requires defendants to have knowledge of the reporting requirement and an intent to evade the reporting requirement, but not specific knowledge of the law prohibiting their conduct.[63] The defendant Dichne, an import-export broker, was carrying an endorsed check for $375,000 to Switzerland.[64] The money, which was "apparently stolen from a fund allocated for the payment of health and welfare claims of union members," belonged to another man, who had hired Dichne to transport the money out of the country.[65]

Dichne claimed he had no knowledge of the law's requirement to report the check to the proper authorities, even though he heard the announcements and saw the posters in the airport which notified travelers of the reporting requirements.[66] The Second Circuit rejected his argument and found that an experienced import-export broker had little chance claiming ignorance of the law, especially given the evidence of a taped conversation between Dichne and another man, in which Dichne specifically made mention of not wanting to be told that he had to report the check to the I.R.S.[67] Based on this concrete, as well as circumstantial, evidence the court convicted Dichne.

In contrast to *Dichne*, the Fifth Circuit held in *United States v. Warren*[68] that a defendant must have "*actually known* of the currency reporting requirement and voluntarily and intentionally violated that known legal duty in order to be convicted of the crime" of transporting over $10,000 into or out of the country without reporting it.[69] In *Warren*, the defendants were stopped after they sailed across the border.[70] The customs patrol officers boarded their ship and found

60 *Id.* at 1472.

61 For the text of 31 U.S.C. § 5316, see *supra* note 48.

62 612 F.2d 632 (2d Cir. 1979), *cert. denied*, 445 U.S. 928 (1980). *Dichne* was decided under the pre-1986 statute, 18 U.S.C. § 1001.

63 *Id.* at 636-38.

64 *Id.* at 635.

65 *Id.* at 634.

66 *Id.* at 635-37.

67 *Id.* at 637-38.

68 612 F.2d 887 (5th Cir.), *cert. denied*, 446 U.S. 956 (1980). *Warren* was also decided under the pre-1986 statute.

69 *Id.* at 890 (citing United States v. Granda, 565 F.2d 922 (5th Cir. 1978)).

70 *Id.*

$41,500 in United States currency and 46,800 in Colombian pesos.[71] The Warrens were not traveling through a regular checkpoint, and, when customs officers and the Coast Guard boarded their vessel, they failed to inform them of the duty to report cash being transported into or out of the country.[72] Thus, the court concluded that the Warrens were not notified of the law and were thus not guilty of a "willful" violation of failing to report the transportation of currency into or out of the United States.[73]

E. IGNORANCE OF THE LAW

The United States Supreme Court has stated: "[t]he general rule that ignorance of the law or mistake of the law is no defense to criminal prosecution is deeply rooted in the American legal system."[74] Prohibiting an ignorance of the law defense is desirable because a rule requiring citizens to know the law both protects society and encourages knowledge.[75] In the early part of the twentieth century, the Supreme Court established the rule that defendants do not have to know that their conduct is illegal to be found guilty of a crime.[76] Since that time, the Court has continued to follow the rule that ignorance of the law is not a defense to a crime.[77] In *United States v. International Minerals & Chemical Corp.*,[78] the Court found the defendant corporation guilty of transporting corrosive liquids, despite the corporation's claim that it was unaware such conduct was prohibited by law.[79] The corporation was charged with shipping sulfuric and hydrosulfuric acids in interstate commerce without proper shipping papers, in violation of Interstate Commerce regulation 49 C.F.R.

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71 *Id.* at 890.

72 *Id.* at 890 n.3.

73 *Id.* at 891.

74 United States v. Cheek, 498 U.S. 192, 199 (1991) (citations omitted).

75 *See* Mark C. Winings, Comment, *Ignorance is Bliss, Especially for the Tax Evader*, 84 J. CRIM. L. & CRIMINOLOGY 575, 577 (1993).

76 *See* Shelvin-Carpenter Co. v. Minnesota, 218 U.S. 57, 70 (1910) (defendant found guilty of trespassing by cutting or assisting to cut timber upon state land, despite his lack of knowledge that such activity was prohibited).

77 Despite the Court's insistence on adherence to the ignorance of the law maxim, it has granted exceptions in various cases. *See, e.g.*, Liparota v. United States, 471 U.S. 419 (1985) (intent to break the law required for violation of statute regulating food stamp sales); Lambert v. California, 355 U.S. 225 (1957) (intent to break the law required for violation of ordinance requiring convicted felon to register with police if they intended to stay in Los Angeles for a proscribed period of time); Morisette v. United States, 342 U.S. 246 (1952) (intent to break the law necessary for violation of stealing or converting government property).

78 402 U.S. 558 (1971).

79 *Id.* at 565.

173.427.[80] The corporation knew its shipment contained dangerous materials, but claimed it was unaware of the regulation prohibiting their transportation.[81] The Court rejected the corporation's claim that ignorance of the regulation was a defense to culpability because "the probability of regulation is so great that anyone who is aware that he is in possession of . . . or dealing with [the materials] must be presumed to be aware of the regulation."[82] In addition to disallowing an ignorance of the law defense for shipping dangerous materials, the Court has also disallowed the defense for selling narcotics,[83] failing to register a gun,[84] shipping misbranded drugs,[85] and mailing obscene materials.[86]

F. CRIMINAL TAX CODE VIOLATIONS AS AN EXCEPTION TO THE IGNORANCE OF THE LAW MAXIM

The only categorical exception to the prohibition on ignorance of the law as an excuse to a crime involves criminal tax code violations. Because of the complex nature of the tax laws, the Court has carved out an exception to the prohibition against an ignorance of the law defense.[87]

In *United States v. Cheek*,[88] the Court held that to establish a "willful" violation of failing to file income taxes and attempting to evade federal income taxes, the government must prove that the defendant acted with the intent to break the law.[89] Defendant Cheek, a commercial airline pilot, claimed that he had not acted "willfully" because he sincerely believed the teachings of a group he had joined, which advocated the unconstitutionality of income taxes.[90] In addition, Cheek expressed his belief that wages were not income and that he was not a person required by law to file tax returns.[91] The Court agreed with Cheek that the jury should have been able to determine for itself whether Cheek was aware of the duty to file income tax returns.[92] However, it rejected his claim that income taxes are unconstitutional

80 *Id.* at 559.
81 *See id.* at 560.
82 *Id.* at 565.
83 United States v. Balint, 258 U.S. 250 (1922).
84 United States v. Freed, 401 U.S. 601 (1971).
85 United States v. Dotterweich, 320 U.S. 277 (1943).
86 Hamling v. United States, 418 U.S. 87 (1974).
87 *See* United States v. Pomponio, 429 U.S. 10 (1976); United States v. Bishop, 412 U.S. 346 (1973); United States v. Murdock, 290 U.S. 389 (1933).
88 498 U.S. 192 (1991).
89 *Id.* at 201, 205.
90 *Id.* at 195-96.
91 *Id.* at 196 n.5.
92 *Id.* at 203.

on the ground that such a belief is not a mistake of law but an invalid conclusion of law.[93] The Court also dismissed the Seventh Circuit Court of Appeals' requirement that a good-faith belief must be objectively reasonable, concluding that a jury is allowed to consider any evidence which might negate the defendant's awareness of the legal duty to file tax returns.[94] Thus, after *Cheek*, a defendant's subjective knowledge of the law is sufficient to establish whether he is liable for "willfully" failing to file and evading income taxes.[95]

The *Cheek* exception that ignorance of the law can be a defense to a criminal charge has been rejected in other contexts.[96] In *United States v. Hollis*,[97] the Tenth Circuit rejected the extension of the *Cheek* principle to the loan fraud context. The defendants in *Hollis*, Tom and Pamela Hollis, obtained bank loans by submitting false records and defrauded an insurance company by filing a false insurance claim and by overstating the amount of damages to their building after it was hit by lightening.[98] They were subsequently convicted of bank fraud, submitting false financial statements to financial institutions, mail fraud, and engaging in a monetary transaction in interstate commerce with criminally derived proceeds.[99] Relying on *Cheek*, the Hollises argued that the court improperly instructed the jury as to the "willfulness" requirement.[100] They claimed that to prove they "willfully" violated the law, the government must prove that they specifically engaged in conduct they knew to be against the law.[101] The Tenth Circuit rejected the Hollis' argument, finding that the *Cheek* decision applied only to criminal violations of federal tax statutes.[102] The court interpreted the term "willful" to not require knowledge of a known legal duty and concluded that the district court's instruction to the jury, that the Hollises were presumed to know what the law for-

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93 *Id.* at 205-06.

94 *Id.* at 203.

95 *Id.* at 206-07.

96 *See* United States v. Gay, 967 F.2d 322 (9th Cir.), *cert. denied*, 113 S. Ct. 359 (1992) (rejecting the extension of *Cheek* to mail fraud cases); United States v. Chaney, 964 F.2d 437 (5th Cir. 1992) (rejecting the extension of *Cheek* to bank fraud cases); United States v. Dockray, 943 F.2d 152 (1st Cir. 1991) (rejecting the extension of *Cheek* to mail and wire fraud cases). *But see* United States v. Mills, 835 F.2d 1262 (8th Cir. 1987) (applying a *Cheek*-like exception of the ignorance of the law principle to prosecutions for "willful" destruction of government property).

97 971 F.2d 1441 (10th Cir. 1992), *cert. denied*, 113 S. Ct. 1580 (1993).

98 *Hollis*, 971 F.2d at 1445-47.

99 *Id.* at 1444.

100 *Id.* at 1451.

101 *Id.*

102 *Id.* (citing United States v. Dashney, 937 F.2d 532, 539-40 (10th Cir.), *cert. denied*, 112 S. Ct. 402 (1991)).

bids, was proper.[103]

Courts have also refused to apply a *Cheek*-like standard to violations of the federal anti-structuring statutes.[104] In *United States v. Beaumont*,[105] the Fifth Circuit refused to apply a *Cheek*-like ignorance of the law defense to a defendant charged with making several bank deposits in denominations under $10,000 for the purpose of evading the federal reporting requirements.[106] The defendant's cash transactions were in small bills, wrapped in rubber bands, and contained in plastic sandwich bags.[107] The court rejected defendant Beaumont's argument that *Cheek* required the government to prove he was aware of the illegality of breaking up large currency transactions into smaller amounts. Rather, the court concluded that *Cheek* applies only to criminal tax offenses because of the complexity of the tax laws.[108] Given the straightforwardness of the currency reporting laws, the court refused to apply an exception to the ignorance of the law maxim to a defendant charged with structuring currency transactions.[109]

III. Facts and Procedural History

On October 20, 1988, defendant-petitioner Waldemar Ratzlaf[110] lost $160,000, his credit limit, playing Blackjack at the High Sierra Casino in Reno, Nevada.[111] A resident of Portland, Oregon, Ratzlaf was an avid gambler and enjoyed lines of credit at fifteen casinos in Nevada and New Jersey.[112] The High Sierra Casino gave Ratzlaf one week to repay his losses.[113]

Exactly one week later, on October 27, 1988, Ratzlaf returned to the High Sierra Casino to pay his debt with a shopping bag containing $100,000 in cash.[114] When Ratzlaf requested that the casino not file any written report on his cash payment, Stephen Allmaras, the ca-

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103 *Id.* at 1451-52.

104 *See, e.g.*, United States v. Beaumont, 972 F.2d 91, 94-95 (5th Cir. 1992); United States v. Caming, 968 F.2d 232, 240-41 (2d Cir.), *cert. denied*, 113 S. Ct. 416 (1992); United States v. Rogers, 962 F.2d 342, 344 (4th Cir. 1992); United States v. Brown, 954 F.2d 1563, 1569 n.2 (11th Cir.), *cert. denied*, 113 S. Ct. 284 (1992); United States v. Dashney, 937 F.2d 532, 539-40 (10th Cir.), *cert. denied*, 112 S. Ct. 402 (1991).

105 972 F.2d 91 (5th Cir. 1992).

106 *Id.* at 92.

107 *Id.*

108 *Id.* at 94.

109 *Id.* at 94-95.

110 Ratzlaf's wife and a casino employee were also named as defendants; however, the Supreme Court only refers to Waldemar Ratzlaf.

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

112 United States v. Ratzlaf, 976 F.2d 1280, 1281 (9th Cir. 1992).

113 *Id.*

114 Brief for Petitioner at 5, Ratzlaf v. United States, 114 S. Ct. 655 (1994) (No. 92-1196); Brief for Respondent at 7, Ratzlaf v. United States, 114 S. Ct. 655 (1994) (No. 92-1196).

sino's vice-president, informed Ratzlaf that a casino, like a bank, must report cash payments it receives in excess of $10,000 to state and federal authorities.[115] Allmaras then told Ratzlaf that while he could not accept cash without reporting the transaction to the government, he could accept a single cashier's check for the amount due without filing a report, and offered a limousine and a casino employee to aid Ratzlaf in obtaining the check.[116]

Ratzlaf went to purchase a cashiers check, but refrained when the bank told him of its obligation to report cash transactions in amounts greater than $10,000.[117] To prevent these reports from being filed, Ratzlaf used the cash to purchase or attempt to purchase several cashiers checks in amounts less than $10,000 from various banks.[118] Following these purchases, Ratzlaf returned to the High Sierra Casino and submitted the various cashiers checks he had purchased, each in an amount less than $10,000, as a partial payment on his gambling debt.[119] Since all of his debt had not been paid, Ratzlaf, upon returning to Portland, purchased five more cashiers checks in amounts less than $10,000 and had three acquaintances also purchase cashiers checks in amounts less than $10,000.[120]

Also around this time, in May of 1988, the Internal Revenue Service informed Ratzlaf that he was being audited for engaging in large cash transactions with casinos and failing to report gambling income on his tax returns.[121] Ratzlaf denied any wrongdoing until an IRS agent confronted him with the results of a "bank deposit analysis" which showed a discrepancy of more than $22,000 between Ratzlaf's income and total bank deposits for 1986.[122] After expanding the audit beyond 1986, the IRS agent concluded that Ratzlaf had unreported income of $14,000 for 1985, $23,000 for 1986, and $101,330 for 1987.[123] In addition, although Ratzlaf initially denied concealing large sums of cash, he admitted at trial to having $134,000 in gambling winnings hidden in a piece of furniture in his bedroom.[124]

Based on Ratzlaf's bank transactions on October 27, 1988, he was indicted by a grand jury and charged with structuring transactions for the purpose of evading federal reporting requirements in violation of

115 Respondent's Brief at 8, *Ratzlaf* (No. 92-1196).
116 *Id.*; Petitioner's Brief at 5, *Ratzlaf* (No. 92-1196).
117 Petitioner's Brief at 5-6, *Ratzlaf* (No. 92-1196).
118 *Id.* at 6.
119 *Id.*
120 *Id.* at 6-7.
121 Respondent's Brief at 5, *Ratzlaf* (No. 92-1196).
122 *Id.*
123 *Id.* at 6.
124 *Id.* at 6-7.

31 U.S.C. §§ 5322(a)[125] and 5324.[126] The United States District Court for the District of Nevada instructed the jury that the government had to prove that the defendant had knowledge of a financial institution's reporting obligation and that the defendant attempted to evade that obligation.[127] The court further instructed the jury that the government did not have to prove that the defendant knew the structuring was unlawful.[128] Applying these instructions, the jury found Ratzlaf guilty of violating 31 U.S.C. §§ 5322 and 5324 and sentenced him to seven-and-one-half years in federal prison and three years of supervised release, and fined him $26,300 plus a special assessment of $300.[129]

Ratzlaf appealed his conviction to the Ninth Circuit, arguing that he could not be found guilty of structuring unless the government proved that he knew such structuring was illegal.[130] He claimed that the Supreme Court's decision in *Cheek v. United States*[131] required the Government to prove that he, like the defendant in *Cheek*, intentionally violated a known legal duty.[132] It was this higher burden of proof that Ratzlaf insisted the government must prove. He argued that the Court's decision in *Cheek* overruled the Ninth Circuit decision of *United States v. Hoyland*,[133] where the court found that a defendant acts willfully under the structuring statute if he intended to prevent a bank from fulfilling its reporting obligations.[134]

The Ninth Circuit rejected Ratzlaf's argument and affirmed his conviction.[135] The court distinguished the Supreme Court's holding in *Cheek* as an exception to the traditional rule that ignorance of the law is not an excuse to a crime, based on the complex nature of the tax laws.[136] Accordingly, the Ninth Circuit found that a defendant is

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125 Ratzlaf v. United States, 114 S. Ct. 655, 657 (1994). The text of 31 U.S.C. § 5322(a) states: "A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than $250,000, or imprisoned for not more than five years, or both."

126 *Ratzlaf*, 114 S. Ct. at 657. The text of 31 U.S.C. § 5324 states: "No person shall for the purpose of evading the reporting requirements of 5313(a) . . . (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions."

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

128 *Id.*

129 *Ratzlaf*, 976 F.2d 1280, 1282-83 (9th Cir. 1992).

130 *Id.* at 1283.

131 498 U.S. 192 (1991).

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

133 914 F.2d 1125, 1129-30 (9th Cir. 1990).

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

135 *Id.* at 1287.

136 *Id.* at 1284.

guilty of willfully violating the anti-structuring provision of §§ 5322 and 5324 if he "knows that the bank must report a currency transaction and then intentionally acts in a way to prevent that . . . ."[137] Thus, according to the Ninth Circuit, to find a defendant guilty under § 5322(a) the government does not have to prove that the defendant knew he acted illegally.[138]

The United States Supreme Court granted certiorari[139] to determine whether a "willful" violation of 31 U.S.C. § 5322(a) requires the government to prove that the defendant knew the structuring in which he engaged was unlawful.[140]

IV. SUMMARY OF OPINIONS

A. MAJORITY OPINION

In an opinion written by Justice Ginsburg,[141] the Court held that the willfulness requirement of 31 U.S.C. § 5322(a) mandates that the government prove not only that the defendant knew of a financial institution's obligation to report currency transactions greater than $10,000 and his intention to avoid this obligation, but also that the defendant knew his conduct was prohibited by law.[142] Because the trial judge did not instruct the jury that the government must prove the defendant knew the structuring was illegal, the Court reversed and remanded the case for further proceedings.[143]

Justice Ginsburg began her analysis by discussing the justifications for the federal reporting requirement statutes. She explained that Congress enacted the Currency and Foreign Transactions Reporting Act (Bank Secrecy Act) in 1970 to deter the use of banks and other financial institutions as conduits for criminal activity.[144] To ensure compliance with this act, Congress enacted an anti-structuring provision, 31 U.S.C. § 5324, in 1986 as part of the Money Laundering

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137 *Id.* at 1287.

138 *See id.*

139 Ratzlaf v. United States, 113 S. Ct. 1942 (1993).

140 Ratzlaf v. United States, 114 S. Ct. 655, 658 (1994).

141 *Id.* at 657. Justices Stevens, Scalia, Kennedy, and Souter joined in the opinion.

142 *Id.* at 657.

143 *Id.* at 663.

144 *Id.* at 658. *See* 31 U.S.C. §§ 5311-5325. Section 5313(a) states:

> 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.

Control Act of 1986.[145] Section 5324 prohibits an individual from breaking up large currency transactions into smaller transactions of less than $10,000. The criminal enforcement provision of the anti-structuring act lies in 31 U.S.C. § 5322(a), which reads: "a person willfully violating this subchapter or a regulation prescribed under this subchapter . . . shall be fined not more than $250,000, or imprisoned for not more than five years, or both."

The Court next explained that a conviction under § 5322 requires proof of "willfulness" on the part of the defendant.[146] According to the Court, a "willful" actor is "one who violates 'a known legal duty,'"[147] who acts with a "'specific intent to commit the crime,' *i.e.*, 'a purpose to disobey the law.'"[148] Justice Ginsburg also reprimanded the trial court and the Ninth Circuit Court of Appeals for treating the willfulness requirement "essentially as surplusage—as words of no consequence."[149]

In addition to citing several cases dealing with the Currency and Foreign Transactions Reporting Act that state that "willfulness" requires proof that the defendant violated a known legal duty,[150] the Court supported its decision by relying on the principle that a term

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145 *Ratzlaf*, 114 S. Ct. at 658. Section 5324 reads: "(a) No person shall for the purpose of evading the reporting requirements of 5313(a) . . . (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions." The appellate court noted that Congress enacted § 5324 "to close this apparent loophole in the government's information gathering scheme." United States v. Ratzlaf, 976 F.2d 1280, 1286 (9th Cir. 1992).

146 *Ratzlaf*, 114 S. Ct. at 659.

147 *Id.* at 659 (citing United States v. Sturman, 951 F.2d 1466, 1476-77 (6th Cir. 1991), *cert. denied*, 112 S. Ct. 2964 (1992)).

148 *Id.* (quoting United States v. Bank of New England, N.A., 821 F.2d 844, 854-59 (1st Cir.), *cert. denied*, 484 U.S. 943 (1987)).

149 *Id.*

150 *Id.* ("'willful violation' of § 5313's reporting requirement for cash transactions over $10,000 requires 'voluntary, intentional, and bad purpose to disobey the law'" (citing *Bank of New England*, 821 F.2d at 854-59); "'willful violation' of § 5313's reporting requirement for cash transactions over $10,000 requires 'proof of the defendant's knowledge of the reporting requirement and his specific intent to commit the crime'"(quoting United States v. Granda, 565 F.2d 922, 926 (5th Cir. 1978)); United States v. Eisenstein, 731 F.2d 1540, 1543 (11th Cir. 1984); "'willful violation' of § 5314's reporting requirement for foreign financial transactions requires proof of 'voluntary, intentional violation of a known legal duty'"(quoting Cheek v. United States, 498 U.S. 192, 201 (1991)); United States v. Sturman, 951 F.2d 1444, 1476-77 (6th Cir. 1991), *cert. denied*, 112 S. Ct. 2964 (1992); "'willful violation' of § 5316's reporting requirement for transportation of currency across international boundaries requires that defendant 'have *actually known* of the currency reporting requirement and have voluntarily and intentionally violated that known legal duty'" (citing United States v. Warren, 612 F.2d 887, 890 (5th Cir.), *cert. denied*, 446 U.S. 956 (1980)); "'willful violations' of § 5316's reporting requirement for transportation of currency across international boundaries requires proof of defendant's 'knowledge of the reporting requirement and his specific intent to commit the crime'"(quoting *Granda*, 565 F.2d at 926); United States v. Dichne, 612 F.2d 632, 636 (2d Cir. 1979), *cert. denied*, 445 U.S. 928 (1980)).

should be read the same way each time it appears in the text of a statute.[151] Otherwise, the Court warned, a code's usefulness will be undermined.[152] Thus, because courts have read "willful" within the context of §§ 5313, 5314, and 5316 as requiring knowledge of the law's reporting requirement, they should read it as requiring knowledge within the context of § 5322 as well.[153]

Justice Ginsburg also rejected the government's assertion that defendants who violate § 5324 act willfully by the very nature of their actions.[154] In its brief, the government argued that "structuring is not the kind of activity that an ordinary person would engage in innocently" and that it is therefore reasonable "to hold a structurer responsible for evading the reporting requirements without the need to prove specific knowledge that such evasion is unlawful."[155] The Court rejected this assertion, stating that structuring is not so "obviously evil or inherently bad that the 'willfulness' requirement is satisfied irrespective of the defendant's knowledge of the illegality of structuring."[156] If Congress had wanted to eliminate the willfulness requirement, the Court concluded, it could have done so.[157]

The Court asserted that its decision did not violate the maxim that ignorance of the law is no defense to a criminal charge.[158] According to the Court, Congress can expressly decree that ignorance of the law is in fact a defense to a criminal charge, which is exactly what the Court claimed Congress did with respect to 31 U.S.C. § 5322(a).[159]

Furthermore, the Court refused to look to the legislative history of the anti-structuring statutes.[160] Because the statutory text was clear, there was no need to resort to the statute's history.[161] Although the Court recognized that there were "contrary indications in the statute's legislative history," it declined to address such inconsistencies given the unambiguous nature of the statutory text.[162] Justice Ginsburg

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151 *Ratzlaf*, 114 S. Ct. at 660.

152 *Id.* (citing United States v. Aversa, 984 F.2d 493, 498 (1st Cir. 1993) (en banc), *cert. granted* and *judgment vacated sub nom.* Donovan v. United States, 114 S. Ct. 873 (1994)).

153 *Id.* at 660.

154 *Id.*

155 *Id.* (citing Petitioner's Brief at 29, *Ratzlaf* (No. 92-1196)).

156 *Id.* at 662.

157 *Id.* Note that in the 1994 legislative session, Congress did eliminate the "willfulness" requirement, as Justice Ginsburg suggested. *See infra* notes 224 to 232 and accompanying text.

158 *Id.* at 663.

159 *Id.*

160 *Id.* at 662.

161 *Id.*

162 *Id.*

stated that even if the Court were to find the statutory text ambiguous, it would apply the rule of lenity and resolve any doubt in favor of the defendant.[163]

The Supreme Court ultimately reversed the judgment of the Ninth Circuit and remanded the case for further proceedings consistent with the high court's opinion, because the jury was not properly instructed as to the knowledge required for a "willful" violation of § 5324.[164]

B. JUSTICE BLACKMUN'S DISSENT

In dissent, Justice Blackmun[165] asserted that the general rule that ignorance of the law is not a defense to a criminal charge is deeply rooted in American jurisprudence and has been followed by the Supreme Court in numerous cases.[166] Under this principle, Justice Blackmun concluded that "the term 'willfully' in criminal law generally 'refers to consciousness of the act but not to consciousness that the act is unlawful.'"[167] According to Justice Blackmun, the majority's holding, which defined "willfulness" as requiring defendants to have knowledge of the illegality of their actions, violates both precedent and the ignorance of the law rule. The majority's holding exonerates defendants who know it is wrong to prevent a bank from fulfilling its reporting obligations, but do not know, or claim not to know, that such conduct is prohibited.[168]

Justice Blackmun also argued that the anti-structuring provision identifies the requirements necessary for a violation under § 5324, thereby implying that the "willfulness" mens rea standard of § 5322 is not applicable to a violation under § 5324.[169] According to Justice Blackmun, to constitute a structuring violation under § 5324, the government must prove that the defendant had knowledge of the financial institution's reporting obligations and that the defendant

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163 *Id.* at 662-63.

164 *Id.* at 663.

165 Chief Justice Rehnquist and Justices O'Connor and Thomas joined in Justice Blackmun's dissent.

166 *Ratzlaf*, 114 S. Ct. at 664 (Blackmun, J., dissenting).

167 *Id.* (Blackmun, J., dissenting) (quoting *Cheek*, 498 U.S. at 209 (Scalia, J., concurring)). Blackmun also cited Browder v. United States, 312 U.S. 335, 341 (1941); Potter v. United States, 155 U.S. 438, 446 (1894); American Surety Co. v. Sullivan, 7 F.2d 605, 606 (2d Cir. 1925) (L. Hand, J.) ("'[T]he word 'willful' . . . means no more than that the person charged with the duty knows what he is doing,' not that 'he must suppose that he is breaking the law'"); MODEL PENAL CODE § 2.02(8) (1985) ("'A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.'").

168 *See Ratzlaf*, 114 S. Ct. at 665-66 (Blackmun, J., dissenting).

169 *Id.* at 665 (Blackmun, J., dissenting).

structured currency transactions for the purpose of evading those obligations.[170] Only in federal criminal tax situations, where the tax laws are complex, does Justice Blackmun believe that the term "willful" requires knowledge of a known legal duty.[171] Because the provisions here are "perhaps among the simplest in the United States Code," the complexity exception does not apply to structuring violations.[172]

The dissent also found support for its position in the Act's legislative history. Justice Blackmun referred to Congress' purpose of codifying *United States v. Tobon-Builes*,[173] where the Eleventh Circuit interpreted "willful" to require a knowledge of a bank's duty to file a report and an intent to evade this requirement.[174] As further proof of Congress' intended interpretation of the term "willful," Justice Blackmun cites to an excerpt from the Senate Report where an example is provided as to the intent required for the anti-structuring provision.[175] A person who breaks up an intended $18,000 transaction into two transactions of $9,000, with the specific intent that the bank not fulfill its reporting obligation, satisfies the intent necessary for a violation.[176]

Furthermore, the dissent opined that the very nature of currency structuring reveals that it is hardly innocent conduct.[177] Accordingly, defendants who know of a bank's obligation to make a report and who structure their transaction so as to avoid this obligation do not deserve the benefit of forcing prosecutors to prove a higher degree of knowledge.[178] The dissent argued that such a reading would make prosecution for structuring violations virtually impossible and would reopen the loophole Congress intended to close when it enacted § 5324.[179]

V. ANALYSIS

The dissent's definition of "willful" requires that defendants have knowledge of the bank's obligation to report cash transactions greater than $10,000 and that they break up their cash transactions into

170 *Id.* (Blackmun, J., dissenting).

171 *Id.* at 667 (Blackmun, J., dissenting).

172 *Id.* (Blackmun, J., dissenting).

173 706 F.2d 1092, 1101 (11th Cir. 1983).

174 *Ratzlaf*, 114 S. Ct. at 668 (Blackmun, J., dissenting).

175 *Id.* at 668-69 (Blackmun, J., dissenting).

176 *Id.* (Blackmun, J., dissenting) (citing S. REP. No. 433, 99th Cong., 2d Sess. 22 (1986)).

177 *Id.* at 666 (Blackmun, J., dissenting).

178 *See id.* (Blackmun, J., dissenting).

179 *Id.* at 669-70 (Blackmun, J., dissenting). In response to the dissent's claim that the majority's interpretation of the term "willful" would make prosecutions impossible, the Court stated that a jury can infer knowledge on the part of the defendant "by drawing reasonable inferences from the evidence of defendant's conduct." *Id.* at 663 n.19.

amounts under $10,000 with the intent of preventing the bank from filing a report.[180] Whether a defendant knew the bank was under a legal obligation to file a report is irrelevant—all that is relevant is that the defendant acted with the intent to frustrate the bank's obligations.

The legislative history of the 1986 anti-structuring statutes articulates the type of activity Congress intended to criminalize. With specific examples of prohibited conduct, Congress made clear that a defendant who "willfully" structures currency transactions to avoid the reporting requirement is aware of the bank's obligation to file a report and acts with the intent of frustrating that obligation.[181]

In addition to receiving support from lower courts, the dissent's standard of "willfulness" is proper because it does not allow a defendant to use an ignorance of the law defense. Under the majority's holding, defendants who act with the intent to frustrate a bank's obligation, an obligation of which they are aware, will be exonerated simply because they are unaware that the bank was under a legal duty to file a report.

Advocating a definition of "willful" which requires knowledge of the reporting requirement and an intent to evade those requirements ensures that innocent actors are not convicted. A defendant who is aware of the bank's obligations to file a report and who acts to cause the bank not to file such a report actively frustrates the bank's obligations. Such an individual is hardly an innocent actor.

Finally, the majority's holding in *Ratzlaf* would make prosecutorial victories under 31 U.S.C. § 5324 virtually impossible. According to the Court, to convict a defendant of "willfully" structuring currency transactions, the government must prove the defendant was aware of the existence of a law specifically prohibiting his conduct. Because no notice provisions exist to alert individuals of this law, proving a defendant's knowledge is nearly impossible.

A. LEGISLATIVE HISTORY IS CONSISTENT WITH THE DISSENT'S APPROACH

The majority refused to rely on the anti-structuring statute's legislative history, although it did recognize inconsistencies between its holding and the statute's history.[182] As the dissent recognized, the Act's legislative history is illustrative in determining the intent necessary to establish a "willful" violation of structuring and the type of conduct Congress intended to criminalize.[183]

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180 *Id.* at 665 (Blackmun, J., dissenting).

181 *See* S. REP. No. 433, 99th Cong., 2d Sess. 22 (1986).

182 *Ratzlaf*, 114 S. Ct. at 662. *See supra* notes 160 to 163 and accompanying text.

183 *See Ratzlaf*, 114 S. Ct. at 667 (Blackmun, J., dissenting).

Faced with the problem of the lower courts' failure to convict individual defendants under the anti-structuring provision, Congress enacted 31 U.S.C. § 5324 in 1986 to apply specifically to individuals.[184] The Senate Judiciary Committee noted its intent to codify an Eleventh Circuit decision, *United States v. Tobon-Builes*,[185] which held a defendant liable for "willfully" structuring currency transactions where the defendant was aware of the bank's obligation to file a CTR and acted with the purpose of causing the bank to fail to file the report.[186] According to the court in *Tobon-Builes*, the government did not have to prove that the defendant was aware his conduct was prohibited by law.[187]

In addition, the Senate gave an example of the type of activity it was trying to prohibit when it enacted the Act:

> a person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions, would be subject to potential civil and criminal liability.[188]

Waldemar Ratzlaf, who was informed by both the casino and the bank of their obligation to file a CTR for cash transactions greater than $10,000, and who then purchased $76,000 in cashier's checks, each in amounts less than $10,000, and each from a different bank, is the very type of person, as evidenced by this example, whose actions Congress intended to criminalize.

B. EXTENDING IGNORANCE OF THE LAW IS WRONG

The holding of *Cheek v. United States*,[189] which required the government to prove in a criminal tax evasion case that the defendant had knowledge of the illegality of his conduct, was expressly limited to criminal tax code cases.[190] The United States Supreme Court limited the *Cheek* ignorance of the law defense to criminal tax code violations because of the complex nature of the tax codes.[191]

Although in *Ratzlaf* the Court claims to uphold the maxim that ignorance of the law is not an excuse to a criminal charge,[192] it actu-

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184 *See supra* notes 25 to 32 and accompanying text.

185 United States v. Tobon-Builes, 706 F.2d 1092, 1101 (11th Cir. 1983).

186 *Tobon-Builes*, 706 F.2d at 1101. *See supra* notes 17 to 20 and accompanying text.

187 *Id.*

188 Ratzlaf v. United States, 114 S. Ct. 655, 668-69 (1994) (Blackmun, J., dissenting) (quoting S. REP. No. 433, 99th Cong., 2d Sess. 22 (1986)).

189 498 U.S. 192 (1991). *See supra* notes 88 to 95 and accompanying text.

190 *Cheek*, 498 U.S. at 199-202.

191 *Id.* at 200.

192 *Ratzlaf*, 114 S. Ct. at 663.

ally extends the *Cheek* principle to violations of currency structuring. The Court adopted the same definition of "willful" in *Ratzlaf* as it used in the *Cheek* decision, a definition which requires the government to prove that the defendant was aware of the law prohibiting his conduct.[193] This extension of *Cheek*'s heightened scienter requirement to currency structuring cases is wrong given the simple nature of the currency reporting statutes. As Justice Blackmun noted, "far from being complex, the provisions involved are among the simplest in the United States Code."[194] The currency structuring statutes simply forbid an individual or an institution from failing to file a CTR for cash transactions greater than $10,000.[195] The principle in *Cheek* should not be extended to violations of currency structuring not only because of the simple nature of the statutes, but also because a defendant who knows of a bank's obligation to file a CTR and acts to prevent this report from being filed should not be able to claim ignorance of the law. The difference between knowledge that something is wrong and knowledge that something is unlawful is not great enough in this context to allow such a defense; in either case, whether the defendant knows of the law or not, he is frustrating the bank's obligations and Congress' goals.

Appellate courts have used similar reasoning to reject the extension of the *Cheek* ignorance of the law exception to currency structuring cases.[196] Because the Court limited its decision in *Cheek* to criminal tax code violations and because the complexity present in *Cheek* is not an issue with the "'straightforward currency reporting requirements,'" courts have refused to apply *Cheek*'s heightened scienter requirement to currency structuring violations.[197]

C. STRUCTURING IS NOT AN INNOCENT ACTIVITY

The dissent is correct that structuring is not an innocent activity.[198] According to the Code of Federal Regulations, structuring occurs when an individual breaks up a sum larger than $10,000 into smaller amounts for the purpose of evading the reporting require-

193 *See Cheek*, 498 U.S. at 201; *Ratzlaf*, 114 S. Ct. at 657.

194 *Ratzlaf*, 114 S. Ct. at 667 (Blackmun, J., dissenting).

195 *See* 31 U.S.C. §§ 5313, 5322 and 5324.

196 *See* United States v. Beaumont, 972 F.2d 91, 94-95 (5th Cir. 1992); United States v. Caming, 968 F.2d 232, 240 (2d Cir.), *cert. denied*, 113 S. Ct. 416 (1992); United States v. Rogers, 962 F.2d 342, 344 (4th Cir. 1992); United States v. Brown, 954 F.2d 1563, 1569 n.2 (11th Cir.), *cert. denied*, 113 S. Ct. 284 (1992); United States v. Dashney, 937 F.2d 532, 539-40 (10th Cir.), *cert. denied*, 112 S. Ct. 402 (1991). *See also supra* notes 74 to 86 and accompanying text.

197 *Beaumont*, 972 F.2d at 94 (quoting *Dashney*, 937 F.2d at 540).

198 *See Ratzlaf*, 114 S. Ct. at 666 (Blackmun, J., dissenting).

ments.[199] Thus by definition, individuals who engage in structuring have knowledge that their transaction requires a report to be filed and act with the intent of causing this report not to be filed. Such knowledge of the reporting requirements and intent to deprive the government of information hardly encompasses innocent activity.

Several appellate courts have found that structuring is not, as the majority claimed, the type of activity that a defendant engages in innocently.[200] In *United States v. Shirk*,[201] the Third Circuit found that a defendant who made eighty-eight currency deposits in an eleven month period, with none of the deposits exceeding $10,000, was guilty of currency structuring under § 5324. Shirk, a full-time police officer who ran "one of the nation's largest wholesale firearm distributorships"[202] out of his home, claimed that he could not be guilty of structuring currency transactions because he did not have knowledge that such conduct was illegal.[203] The Third Circuit disagreed, stating that knowledge of illegality is not required for a conviction under § 5324, because unlike other sections, the act of structuring "contains an element of wrongfulness, or culpability."[204] Thus, because the nature of breaking up currency transactions into smaller amounts to prevent a financial institution from filing a report necessarily involves knowledge on the part of the defendant and intent to circumscribe the law, structuring is not an innocent activity.

Similarly, Waldemar Ratzlaf was not just an innocent gambler. At the time he incurred his gambling debt at the High Sierra Casino, the I.R.S. was investigating him.[205] A subsequent audit showed that Ratzlaf had unreported income of $101,330 in 1987.[206] He obviously did not want a CTR to be filled out on the repayment of this debt because he could not account for this additional income to the I.R.S. . Ratzlaf is the type of person the Act was designed to catch—someone who attempted to deceive the government as to the existence of some $100,000.[207]

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199 31 C.F.R. 103.11(p) (1993).

200 *See, e.g.*, United States v. Shirk, 981 F.2d 1382, 1391 (3d Cir. 1993), *cert. granted* and *judgment vacated*, 114 S. Ct. 873 (1994); United States v. Hoyland, 914 F.2d 1125, 1129 (9th Cir. 1990); United States v. Scanio, 900 F.2d 485, 490 (2d Cir. 1990).

201 981 F.2d 1382 (3d Cir. 1993), *cert. granted* and *judgment vacated*, 114 S. Ct. 873 (1994).

202 *Id.* at 1385.

203 *Id.* at 1390.

204 *Id.* at 1391.

205 Respondent's Brief at 5, *Ratzlaf* (No. 92-1196). *See supra* notes 121 to 125 and accompanying text.

206 *Id.* at 6.

207 *See* H.R. REP. No. 975, 91st Cong., 2d Sess. 10 (1970); S. REP. No. 1139, 91st Cong., 2d Sess. 2-4 (1970).

D. THE MAJORITY'S DECISION RENDERS PROSECUTORIAL VICTORIES IMPOSSIBLE

As the Court now stands after *Ratzlaf*, in a case of structuring currency transactions under 31 U.S.C. § 5324, the government must prove that the defendant is aware that breaking up a currency transaction greater than $10,000 into amounts under $10,000 is illegal.[208] This heightened scienter requirement imposes an impossible burden on prosecutors.[209] The Court's suggested solution to this problem, that a jury may look to circumstantial evidence to draw reasonable inferences, is misleading.[210] The two cases cited by the Court, *United States v. Bank of New England*[211] and *United States v. Dichne*,[212] are distinguishable from the case at bar. In both of these cases the defendant's knowledge of the law requiring the filing of a CTR was proven by his exposure to publication of the law. In *Bank of New England*, the bank's knowledge of the legal duty to file a CTR for one of its regular customers could be inferred from evidence that the tellers and bank personnel had notice of the requirement, as it was part of their job responsibilities.[213] In fact, one teller received notice from the head teller that the transactions of the said customer were reportable.[214] Similarly, in *Dichne*, the defendant had ample notice of the law mandating the filing of a report for anyone transporting more than $10,000 into or out of the United States.[215] Not only was the defendant in *Dichne* an experienced import-export broker, a fact which indicates his familiarity with the reporting law, but he was also exposed to several large color posters prominently displayed throughout the airport departure area, and to at least four announcements made over the airport public address system advising travelers of the monetary reporting requirements.[216]

Without such evidence that the defendant was informed of the law's reporting requirement, proving his knowledge that the law prohibits currency structuring is next to impossible.[217] Under the major-

208 Ratzlaf v. United States, 114 S. Ct. 655, 663 (1994).

209 *See id.* at 669-70 (Blackmun, J., dissenting) (citing Sarah N. Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 FLA. L. REV. 287, 320 (1989)).

210 *Ratzlaf*, 114 S. Ct. at 663 n.19.

211 821 F.2d 844 (1st Cir.), *cert. denied*, 484 U.S. 943 (1987).

212 612 F.2d 632 (2d Cir. 1979), *cert. denied*, 445 U.S. 928 (1980).

213 *Bank of New England*, 821 F.2d at 857.

214 *Id.*

215 *Dichne*, 612 F.2d at 637.

216 *Id.* at 635-36, 638.

217 In 1988 Congress considered, but did not pass, a regulation requiring banks to notify customers of the reporting requirements mandated by § 5324. *See* 53 Fed. Reg. 7948 (1988) (proposed March 11, 1988) and 54 Fed. Reg. 20,398 (1989) (proposal withdrawn

ity's "willfulness" standard, unless there is some form or poster that the defendant saw or read, or an announcement warning people of the law, a defendant can always claim that he did not know a law existed which criminalized his actions. One recent article even suggests that "[w]ise practitioners will take note of this emerging definition of willfulness in certain contexts to help their clients successfully argue that in very complicated statutory schemes 'ignorance of the law' may very well be a defense."[218]

Since the *Ratzlaf* decision, not one defendant has been convicted for structuring currency transactions under § 5324.[219] In *United States v. Jones*,[220] the Seventh Circuit reversed and remanded the conviction of a defendant charged with one count of structuring currency transactions for the purpose of evading the filing of a CTR under § 5324 because the trial court failed to instruct the jury as to the proper knowledge the government was required to prove.[221] The trial court should have instructed the jury that the government had to prove that the defendant "acted with knowledge that the structuring he undertook was illegal."[222] On remand, if Mr. Jones were to claim that he had no knowledge that structuring was illegal, according to *Ratzlaf* he should be found not guilty as to the structuring charge. Foreshadowing that very result, the Seventh Circuit said that "because no evidence was presented at trial showing that Mr. Jones acted with knowledge that the structuring he undertook was unlawful, there is a clear possibility that Mr. Jones cannot be found guilty of the unlawful structuring charge."[223] Because demonstrating knowledge of the law is next to impossible, Mr. Jones, like all defendants prosecuted under 31 U.S.C. §§ 5322 and 5324 after *Ratzlaf*, will successfully evade the law.

E. CONGRESS AMENDS THE STRUCTURING ACT ONCE AGAIN

Congress has not had much luck in compelling enforcement of the anti-structuring provisions.[224] After *Ratzlaf*, it amended the anti-structuring provision for the third time to increase the number of

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May 11, 1989).

218 Michael Chertoff and Felice Berkman, *What You Don't Know Can't Hurt You: Changing Definitions of Willfulness in Federal Criminal Law*, LEGAL BACKGROUNDER, Oct. 21, 1994, at 9.

219 *See, e.g.*, United States v. Rogers, 18 F.3d 265, 268 (4th Cir. 1994); United States v. Retos, 25 F.3d 1220 (3d Cir. 1994).

220 21 F.3d 165 (7th Cir. 1994).

221 *Id.* at 172-73.

222 *Id.* at 172.

223 *Id.* at 173.

224 *See supra* notes 9 to 45 and accompanying text.

prosecutions of people breaking up large currency transactions into amounts smaller than $10,000.[225] On September 23, 1994, President Clinton signed into law the Money Laundering Suppression Act of 1994, which will legislatively alter the result of *Ratzlaf* by eliminating the term "willfully" and replacing it with "knowingly."[226] The new Act essentially nullifies the *Ratzlaf* decision by clarifying that to prove a criminal violation of the currency reporting laws, the government need prove only intent to avoid the reporting requirement and not knowledge of illegal conduct.[227]

A victory for the dissent, the Money Laundering Suppression Act of 1994 supports Justice Blackmun's reading of the term "willful" as requiring a knowledge of the reporting requirements and an intent to avoid the filing of a report.[228] One commentator noted: "[w]hen Supreme Court Justice Henry Blackmun, in dissent, said, 'Now Congress must try to fill a hole it rightly felt it had filled before,' he probably did not expect such a prompt response to the high court's January decision which emasculated structuring prosecutions."[229] The House Committee on Banking, Finance and Urban Affairs categorically rejected the majority's interpretation of 31 U.S.C. § 5322's "willfulness" requirement as it applies to § 5324.[230] According to the Committee, the amendment was adopted "to correct the recent Supreme Court holding" in *Ratzlaf* and

> restore[ ] 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. 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.[231]

Furthermore, to ensure that innocent actors are not wrongly convicted of structuring, Congress expanded the category of individuals who qualify for a filing exception.[232] For example, individuals who deposit their daily business profits, with such profits amounting to less than $10,000 per day, would qualify as exempt individuals.

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225 *See* H.R. REP. No. 438, 103d Cong., 2nd Sess. 1994, 1994 WL 93669 (Leg. Hist.); 140 CONG. REC. (daily ed. March 21, 1994).

226 H.R. REP. No. 438, 103d Cong., 2d Sess. 22 (1994).

227 *See* 63 Banking Report (BNA) 176 (Aug. 1, 1994); Daily Report for Executive, Section A, p. 41 (March 3, 1994); *Bill Cures High Court Structuring Setback*, MONEY LAUNDERING ALERT, March, 1994, at 3; *Clinton to Sign New Law After Easy Passage*, MONEY LAUNDERING ALERT, Aug. 1994, at 1.

228 Ratzlaf v. United States, 114 S. Ct. 655, 665 (1994) (Blackmun, J., dissenting).

229 *Bill Cures High Court Structuring Setback*, MONEY LAUNDERING ALERT, March, 1994, at 3.

230 H.R. REP. No. 438, 103d Cong., 2d Sess. 22 (1994).

231 *Id.*

232 *See* Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, 108 Stat. 2243 (codified as amended in 31 U.S.C. § 5318).

VI. CONCLUSION

The Court's decision in *Ratzlaf v. United States*[233] held that to constitute a "willful" violation of the federal currency structuring statutes, defendants must have knowledge that their conduct is prohibited by law. Such a reading of the term "willful" allows for an ignorance of the law defense, whereby defendants can simply claim that they were unaware of the law's prohibition against currency structuring and avoid conviction.

In contrast, the dissent's interpretation of the term "willful" as it applies in 31 U.S.C. § 5324 does not allow for an ignorance of the law defense. According to the dissent, defendants are guilty of "willfully" violating the currency structuring laws if they are aware of the bank's obligation to file a CTR and if they act with the intent of preventing such a report from being filed. The dissent's interpretation is preferable to that of the majority because structuring is not an innocent activity and defendants who structure currency transactions to evade the federal reporting requirement hardly deserve an ignorance of the law defense. In addition, the Court has recognized that an ignorance of the law defense applies only to criminal tax code violations. The dissent's interpretation of "willful" is also consistent with the holdings of ten courts of appeals and with the Acts' legislative history. Furthermore, under the majority's interpretation of "willful," prosecutorial victories will be impossible: to prevail, the government would have to prove defendants had actual knowledge of the law prohibiting their conduct. Because no notice provision exists to alert individuals to this law, proving a defendant's knowledge is nearly impossible.

Recognizing the futility of attempting to prosecute defendants after the majority's holding in *Ratzlaf*, Congress recently amended the anti-structuring statutes to embrace the definition of "willful," as suggested by the dissent. The Money Laundering Suppression Act of 1994 legislatively alters the result in *Ratzlaf* by changing the mens rea necessary for a violation of currency structuring. Specifically, Congress intended to clarify that a defendant need not act with knowledge that his conduct is illegal to be guilty of structuring currency transactions. The problem of unsuccessful prosecutions suggested by Justice Blackmun in his dissent is no longer an issue now that Congress has nullified *Ratzlaf*.

LINDSEY H. SIMON

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233 114 S. Ct. 655 (1994).