

<http://www.nationallawjournal.com/id=1202727809902?>

The 'Financial Speed Trap' in the Case Against Dennis Hastert

Zoe Tillman, The National Law Journal

May 29, 2015

Former House Speaker Dennis Hastert wronged an unidentified "Individual A" years ago, according to the indictment federal prosecutors brought this week against the Illinois Republican. But Hastert isn't being prosecuted for that "prior misconduct," as prosecutors called it in charging documents.

Instead, he's accused of violating federal laws against "structuring"—making purposefully low cash withdrawals to avoid regulations that require banks to report transactions larger than \$10,000 to the feds.

Congress made structuring a crime in the late 1980s to help prosecutors bring down drug dealers, who were making small-currency transactions to avoid the bank reporting rules in place since 1970. More recently, defense lawyers and civil liberties advocates have accused prosecutors of pursuing the charge as a stand-alone offense in a way that goes beyond what Congress intended.

"The reason it's become controversial is that prosecutors in recent years have strayed further and further from the original goal and the old-fashioned cases," said Patrick O'Donnell, a white-collar defense lawyer at Harris, Wiltshire & Grannis in Washington. "They're relatively easy cases to make, although they often irritate judges who take the long view and remember why we have structuring charges."

Hastert, according to the indictment, was approached in 2010 by Individual A about "prior misconduct" that Hastert committed against him or her. Hastert offered to pay Individual A \$3.5 million to conceal that misconduct, prosecutors allege, and made a string of \$50,000 withdrawals from various banks. The indictment does not reveal the nature of the alleged misconduct but the Los Angeles Times [reported Friday](#) the impropriety was sexual in nature.

After the banks questioned Hastert about the withdrawals in 2012, according to the indictment, Hastert began making withdrawals of less than \$10,000. Prosecutors say he did so to avoid the bank reporting requirements and further attention. If that's true, it didn't work: in December, FBI agents questioned Hastert about the withdrawals. Hastert told them he kept the cash. In addition to the structuring charge, Hastert was also indicted on a single count of lying to the FBI.

Hastert, who did not return an interview request, resigned from his lobbying job at Dickstein Shapiro on Thursday. It was not immediately known whether Hastert, who is not a lawyer, had retained counsel. A federal magistrate judge in the U.S. District Court for the Northern District of Illinois set Hastert's bail at \$4,500. A court date for his arraignment has not been scheduled yet.

"In most cases, the government alleges that the reason the defendant engaged in structuring was to hide criminal conduct. What is extraordinary in this case is that the premise may be that what Speaker Hastert was trying to hide was that he was the victim of extortion," Barry Pollack, a white-collar criminal defense lawyer at Miller & Chevalier, said in an email to the NLJ.

Prosecutors have faced scrutiny in recent years for seizing otherwise legally obtained money in civil asset-forfeiture cases based on alleged structuring offenses. In March, the Justice Department [announced](#) new policies restricting asset seizures in those types of cases (The new policy does not apply if there are criminal charges involved.) The IRS announced similar reforms in October, [according to The New York Times](#).

David Smith of Smith & Zimmerman in Alexandria, Virginia, who represents defendants in structuring cases, described the offense as a "financial speed trap." Smith was a federal prosecutor in Virginia and managed asset-forfeiture litigation for the U.S. Department of Justice before he went into private practice.

"The banks don't tell their clients about structuring, they don't put signs in the lobby, they don't send them letters," Smith said. He added that he had represented clients in structuring cases in which a bank teller advised the client to make smaller deposits or withdrawals in order to avoid the extra paperwork.

One recent high-profile structuring investigation involved former New York Gov. Eliot Spitzer. Federal prosecutors looked into whether Spitzer committed any financial crimes in connection with his patronage of a prostitution ring, including making small cash deposits to the escort service to skirt the bank reporting requirement. The U.S. attorney's office in Manhattan [announced in late 2008 that it would not bring charges](#).

Stand-alone structuring cases are on the rise, according to O'Donnell, but it's still more common to see the charge brought alongside allegations of some underlying criminal activity.

[According to BuzzFeed News](#), details about Hastert's alleged "prior misconduct" were withheld from the indictment at least in part at the request of Hastert's lawyers. The report did not identify the attorneys.

Pollack said that if that's true, one explanation might be that prosecutors are still hoping to reach a deal.

"It looks like the government recognizes that the speaker was being extorted and must have accepted the argument that it would be inappropriate for the government to reveal the very fact that Individual A was threatening to disclose," Pollack said. "If there is a public trial, that fact will likely come out. The government may feel that the speaker may be incentivized to enter a plea that does not disclose the prior misconduct."

Smith agreed that prosecutors might be using the threat of exposure as a bargaining chip, but he said he also suspected Hastert received special treatment as a public figure.

"If it was the average snook," Smith said, "they wouldn't have agreed to it."

Contact Zoe Tillman at ztillman@alm.com. On Twitter: [@ZoeTillman](https://twitter.com/ZoeTillman).