How a banking law ensnared former House Speaker Dennis Hastert

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By Francine Kiefer

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“Past misconduct” alleged to have been perpetrated by former US House Speaker Dennis Hastert in a federal indictment would never have come to light were it not for a banking law meant to catch money-launderers.

On Friday, multiple news sources independently confirmed a Tribune story that Mr. Hastert reportedly paid $1.7 million to a man to hide Hastert's alleged sexual abuse of the man when he was a student at the Yorkville, Ill., high school and Hastert was a teacher and wrestling coach.

Thursday's indictment against Hastert obliquely referred to "misconduct" by America's longest serving Republican speaker, a man held in high regard by his House colleagues when he led the House.

But it is a banking law that ensnared the former speaker.

And the law itself is coming under increasing scrutiny for entangling innocents and for federal seizure of their assets.

According to the indictment, Hastert is accused of “structuring” his withdrawals to avoid a $10,000 limit – and for lying about the withdrawals to the FBI. Similarly, “structured” withdrawals to pay for prostitutes led investigators to New York Gov. Eliot Spitzer in 2008. He resigned over the scandal but was not charged.

The $10,000 limit was established under the 1970 Bank Secrecy Act. Under the law, which has been revised over time, banks are required to report withdrawals, deposits, or transfers that exceed that amount to the federal government. They are not allowed to tell their customers when

they make these reports. The aim is to catch criminals laundering money, such as drug dealers, terrorists, and human traffickers.

“There is no doubt that this is used in efforts against drugs and international flows of money of suspected organizations involved in terrorism,” says Walter Olson, of the Cato Institute, a libertarian think tank in Washington. “But we now know there’s a widespread pattern [that involves] businesses that don’t seem to have done anything illegal,” he says.

Mr. Olson draws the distinction between the Hastert and Spitzer cases, which involve withdrawals, and cases that involve mostly deposits – and which have drawn the ire and concern of members of Congress and reform advocates such as Olson.

Not only do banks need to report transactions over the $10,000 limit, they need to report suspicions that a customer may be trying to avoid the limit, say, by depositing amounts slightly under the limit.

Trying to avoid that limit through “restructuring” of lesser amounts is a felony, punishable by up to five years in prison and/or a fine.

Because banks have an incentive to report suspicious activity – banks are fined and individuals can be jailed if found negligent – they cast their net widely to include people in cash-intensive businesses, such as owners of a gas station, liquor store, used-car lot, even a law-abiding Maryland dairy farmer, who still hasn't recovered $29,500 taken by the IRS from his home delivery business.

At the same time, forfeiture laws allow the federal government to seize suspects' bank accounts without any proof of wrongdoing -- even if they have been reporting all their income and paying taxes on it.

The Institute for Justice reports that the number of annual seizures for suspected “restructuring” increased five-fold from 2005 to 2012. At least a third of the cases, it reports, “arose from nothing more than a series of cash transactions under $10,000, with no other criminal activity alleged.”

In February, a hearing on this very subject was held by the House Ways and Means Subcommittee on Oversight. The Justice Department has also released new guidelines about seizures, but that doesn’t mean the problem has been solved, says Olson.

In the Hastert case, bank representatives questioned the former speaker around the time of April 2012 about $50,000 cash withdrawals that he had made, according to the indictment. In July of that year, he started withdrawing cash in increments lower than $10,000.

Further, the indictment says he “knowingly and willfully” made false statements by telling FBI agents that he withdrew the money because he didn’t trust the banking system. “Yeah…I kept the cash. That’s what I’m doing,” he said, according to the indictment.

Before the reports emerged as to the nature of the alleged misconduct, Olson called the Hastert case “bewildering,” citing Mr. Spitzer’s ability to rely on skilled lawyers who got the Justice Department to drop the structuring charges against him.

“Here you are at a top Washington law firm,” he says of Hastert, who has resigned from the firm. “If what he were doing were paying for someone’s silence, bring in a lawyer and they will arrange the thing in such a way that you won’t violate the bank structuring law.”

Why didn't he do that?

The answer may have become apparent today.