Edwards's close call on Bunny money

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We should be grateful that the John Edwards jury has reached its verdict – and found Edwards not guilty on one count of taking an illegal campaign contribution. A guilty verdict could have meant much trouble for all campaign finance regulation.

If Edwards had been found guilty on that count, we could have entered an "Alice in Wonderland" world, where conduct that would not draw the ire of civil law enforcement can lead to prison. Because Edwards could be convicted for taking a contribution that the Federal Election Commission, which regulates campaign finance, wouldn't even regard as a political donation.

It might have been otherwise. The jury, following the judge's final instructions, could have found as a "fact" that the money given by Rachel "Bunny" Mellon, which Edwards and his associates used to hide his mistress, was given for "a purpose" of influencing a federal election. According to those instructions, that purpose could be one of several purposes.

How in the world a jury – or, frankly, anyone – could say what another person's purpose in doing anything is astonishing. It also flies in the face of settled constitutional law.

The Supreme Court has itself decided that "for the purpose of influencing" is a phrase so vague that it cannot be constitutionally applied to campaign finance expenditures. In Buckley v. Valeo, the court ruled that the Constitution requires that a person charged must be told that what he did was, in fact, criminal. But how can someone know what another person's "purpose" was? The court also ruled:

"There is no legislative history to guide us in determining the scope of the critical phrase 'for the purpose of … influencing.' It appears to have been adopted without comment from earlier disclosure acts."

After discussing the vagueness and over-expansive problems with the "for the purpose" standard, the court declared that only ads containing "express advocacy" must be reported as a political contribution. In addition, coordinated expenditures directed by the candidate would be treated as contributions.

The money Mellon paid to Edward's colleagues wasn't an independent expenditure, obviously, but was it an in-kind contribution? That's the government's case. But rather than dealing with the constitutionally suspect vagueness, which the court already pointed out, the prosecution embraced this standard. The result is this remarkable jury instruction:

[T]he government has to prove that Ms. Mellon made a contribution. … Whether the money Ms. Mellon provided to Mr. Young through Mr. Huffman was provided by Ms. Mellon for the purpose of influencing an election is a factual question you will decide from the credible evidence. You will consider any evidence about the intent, motivation and goals of Ms. Mellon…The government does not have to prove that the sole or only purpose of the money was to influence the election. People rarely act with a single purpose in mind.

Indeed, it wouldn't be surprising if Mellon herself would have had a hard time identifying her "purpose." Most of us would. That her internal "purpose" could have meant the difference between freedom and prison for Edwards is outrageous.

In the civil sphere, the FEC precedent doesn't depend on a giver's "purpose." It looks at money given to a candidate as funding accepted by him for his campaign. But if the candidate can show that money from, for example, his parents or a birthday present, was given for an ordinary reason, then it might just be a gift — and subject to a gift tax. But it isn't a campaign contribution.

This rule is less vague than "purpose." It exposes the candidate only to civil enforcement —creating fewer constitutional concerns than the "purpose" test.

In Edwards's case, however, we might have had, but thankfully avoided, the due process nightmare the court confronted in Buckley. No one's liberty, not even Edwards, should rest on the "purpose" behind another person's gift. Today it didn't.

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