IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	)	
	)	**CRIMINAL CASE NO. 1:11-CR-161-1**
v.	)	
	)	
JOHNNY REID EDWARDS	)	

JOHN EDWARDS' PROPOSED JURY INSTRUCTIONS

John Edwards proposes that the Court provide the jury with the following jury instructions. The submission of these jury instructions is not a waiver of Mr. Edwards' arguments in his motions to dismiss or any motion under Federal Rule of Criminal Procedure 29, but an effort to comport the instructions with what the Court will rule its interpretations of the law to be. Mr. Edwards reserves the right to submit additional requests or revise these instructions as the case progresses, including requests at the close of the evidence.

This the 7th day of May, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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This the 7th day of May, 2012.

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MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 1

PRESUMPTION OF INNOCENCE AND REASONABLE DOUBT

Mr. Edwards is presumed by the law to be innocent; the law does not require a defendant to prove innocence or to produce any evidence at all. The government has the burden of proving Mr. Edwards guilty beyond a reasonable doubt and if it fails to do so you must find him not guilty. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the government's proof must be more powerful than that. It must be beyond a reasonable doubt.

To warrant the conviction of the defendant, the evidence of guilt must be so conclusive as to exclude every possible hypothesis of his innocence, and if the jury has a reasonable doubt concerning the establishment of any essential element of the offense, they must acquit the accused, and if the evidence is just as consistent with his innocence as with his guilt, the defendant cannot be convicted.

AUTHORITY: The first two sentences were specifically upheld in United States v. Ochoa-Vasquez, 428 F.3d 1015, 1031 & 1035 n.28 (11th Cir. 2005), and is a slight modification of Federal Judicial Center Pattern Criminal Jury Instruction No. 1, see FJC, Pattern Criminal Jury Instructions, No. 21 (1988). See also First Circuit Pattern Criminal Jury Instruction § 302 (presumption of innocence). The remainder is taken from a modified jury instruction taken from the Federal Judicial Center. See FJC, Pattern Criminal Jury Instructions, No. 21 (1988). The last two sentences of the first paragraph are particularly important. "It is this feature, the juxtaposition of the requisite standard of proof in civil cases with the more stringent criminal trial standard of proof beyond a

reasonable doubt, that is the FJC instruction's greatest asset. As the Fifth Circuit in Williams pointed out, contrasting the civil and the criminal standards of proof is an effective means of framing the issue for the jury. While making clear that 'reasonable doubt' is a higher standard of proof than that necessary in civil cases, the instruction does not unduly disadvantage the prosecution; it clearly states that proof beyond a reasonable doubt 'does not require proof that overcomes every possible doubt.'" United States v. Walton, 207 F.3d 694, 704-06 (4th Cir. 2000) (en banc) (equally divided court) (King, J., dissenting) (quoting United States v. Williams, 20 F.3d 125, 132 n.5 (5th Cir. 1994)). The second paragraph is taken verbatim from United States v. Carrier, 344 F.2d 42, 46 (4th Cir. 1965).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 2

INDICTMENT IS NOT EVIDENCE

The charges against Mr. Edwards are contained in the indictment. The indictment, which was written by the prosecutors in this case, is simply the description of the charge against Mr. Edwards; it is not evidence of anything. Mr. Edwards pleaded not guilty to the charges and denies committing the crimes. Mr. Edwards is presumed innocent and may not be found guilty by you unless all of you unanimously find that the government has proven Mr. Edwards' guilt beyond a reasonable doubt. In addition, Mr. Edwards may not be tried or convicted of any offense that is not charged in the indictment.

AUTHORITY: First Circuit Pattern Criminal Jury Instruction § 1.02 (providing in part: "The charge against the defendant is contained in the indictment. The indictment is simply the description of the charge against the defendant; it is not evidence of anything. The defendant pleaded not guilty to the charge and denies committing the crime. He/She is presumed innocent and may not be found guilty by you unless all of you unanimously find that the government has proven his/her guilt beyond a reasonable doubt.").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 3

CAUTION – CONSIDER ONLY CRIME CHARGED

You are here to decide whether the government has proven beyond a reasonable doubt that Mr. Edwards is guilty of the crime charged. Mr. Edwards is not on trial for any act, conduct, or offense not alleged in the indictment, and he has pled not guilty to those charges. That is very important. You are not here to judge whether you think Mr. Edwards is a good man, or whether he was a good politician or good husband. Your only job is to decide whether he is innocent or guilty of the charges that have been brought in this case. You also should not be concerned with the guilt of any other person or persons not on trial as a defendant in this case, except as you are otherwise instructed.

AUTHORITY: Fifth Circuit Pattern Jury Instruction § 1.19 (adapted).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 4

CAUTIONARY AND LIMITING INSTRUCTIONS AS TO PARTICULAR KINDS OF EVIDENCE

A particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I have told you when that occurred, and instructed you on the purposes for which the item can and cannot be used. For example, [______________]. You must keep the limiting instructions I gave you in mind when considering the evidence in this case.

AUTHORITY: Judge Hornby's Revisions to the First Circuit Pattern Criminal Jury Instructions § 3.07.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 5

LIMITING INSTRUCTION: TRUTH V. OTHER REASON

From time to time, you have heard me say that a statement from a witness or a document was admitted for a reason other than for the truth of what it asserts. Normally, when you hear testimony or see a document, you are free to consider the statement or the document for the truth of what is being asserted. For example, if a witness said or a document contained the statement that it was snowing on January 1, you could consider that to determine whether it was snowing on January 1.

However, sometimes a statement or document is allowed into evidence for a purpose other than to consider the truth of what is being asserted. In the example above, a witness stating that another person had told them it was snowing on January 1 would not be considered by you for the purpose of whether it was really snowing that day, but possibly for you to consider why the person who made that out-of-court statement put on a heavy coat and hat. In other words, in this example, you would not consider the statement for the truth of whether it was snowing but rather as to why the person who said it or heard it did what that person did.

And, of course, with any evidence, it is up to you as the jury to determine whether to credit or discredit any statement made by a witness on the stand or something a witness on the stand stated that someone outside of court said at one time or another. The same considerations of bias, motive and credibility apply.

This distinction between statements for the truth and for another purpose is not one that you may be used to outside of a trial, but I think you can see why it exists.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 6

MR. EDWARDS' CONSTITUTIONAL RIGHT NOT TO PUT ON A DEFENSE [OR TO TESTIFY]

As I have told you repeatedly, only the government has the burden of proof in a criminal case. A defendant never has any burden of proof and, therefore, does not have to put on any evidence at all. Accordingly, Mr. Edwards has a constitutional right not to put on any evidence [or to testify], and no inference of guilt, or of anything else, may be drawn from the fact that he chose not to do so. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

AUTHORITY: First Circuit Pattern Criminal Jury Instruction § 303. See id. cmt. ("An instruction like this must be given if it is requested. See Carter v. Kentucky, 450 U.S. 288, 299-303 (1981); Bruno v. United States, 308 U.S. 287, 293-94 (1939). See also United States v. Ladd, 877 F.2d 1083, 1089 (1st Cir. 1989) ("We do not, however, read Carter as requiring any exact wording for such an instruction."). It must contain the statement that no adverse inference may be drawn from the fact that the defendant did not testify, or that it cannot be considered in arriving at a verdict. See United States v. Brand, 80 F.3d 560, 567 (1st Cir. 1996), cert. denied, 117 S. Ct. 737 (1997). It is not reversible error to give the instruction even over the defendant's objection. See Lakeside v. Oregon, 435 U.S. 333, 340-41 (1978). However, "[i]t may be wise for a trial judge not to give such a cautionary instruction over a defendant's objection." Id. at 340.").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 7

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe everything a witness says or only part of it or none of it.

In deciding what to believe, you may consider a number of factors, including the following: (1) the witness' ability to see or hear or know the things the witness testifies to; (2) the quality of the witness' memory; (3) the witness' manner while testifying; (4) whether the witness has an interest in the outcome of the case or any motive, bias or prejudice; (5) whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence; and (6) how reasonable the witness' testimony is when considered in the light of other evidence which you believe.

AUTHORITY: Judge Hornby's Revisions to the First Circuit Pattern Criminal Jury Instructions § 1.06.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 8

IMPEACHMENT OF WITNESSES BECAUSE OF INCONSISTENT STATEMENTS

You have heard evidence that before testifying at this trial, a witness made a statement concerning the same subject-matter as his or her testimony in this trial. You may consider that earlier statement to help you decide how much of the witness' testimony to believe. If you find that the prior statement was not consistent with the witness' testimony at this trial, then you should decide whether that affects the believability of his or her testimony at this trial.

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

AUTHORITY: First paragraph is from Judge Hornby's Revisions to the First Circuit Pattern Criminal Jury Instructions § 6.01. Second and third paragraphs are from Eleventh Circuit Pattern Criminal Jury Instruction 6.1.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 9

IMPEACHMENT OF WITNESS BECAUSE OF BAD REPUTATION FOR TRUTHFULNESS

There has been evidence tending to show that a witness has a bad reputation for truthfulness in the community where the witness resides, or has recently resided; or that others have a bad opinion about the witness' truthfulness. You may consider reputation and community opinion in deciding whether to believe or disbelieve a witness.

AUTHORITY: Eleventh Circuit Pattern Criminal Jury Instruction 6.7.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 10

CAUTION AS TO WITNESSES WHO TESTIFY FALSELY

If you find that any witness has willfully testified falsely as to any material matter either before this Court or under oath elsewhere, you have the right to reject the testimony of that witness in its entirety.

AUTHORITY: Black's Law Dictionary 491 (7th ed.1999) (describing maxim of *falsus in uno, falsus in omnibus* as "[t]he principle that if the jury believes that a witness's testimony on a material issue is intentionally deceitful, the jury may disregard all of that witness's testimony"); see also Kevin F. O'Malley et al., Federal Jury Practice and Instructions § 15.06 (5th ed. 2000) (spelling out time-honored jury instruction that "[i]f a person is shown to have knowingly testified falsely concerning any important or material matter, you obviously have a right to distrust the testimony of such an individual concerning other matters"); Edward J. Devitt et al., Federal Jury Practice and Instructions § 73.04 (4th ed. 1987) (spelling out similar jury instruction that "[i]f a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 11

CAUTION AS TO COOPERATING WITNESS

You have heard the testimony of Andrew Young. He admitted to having engaged in criminal conduct and could be charged with crimes. As it is up to the government to decide whether or not he should be prosecuted, he may have reasons to want to please the government. Some people in this position are entirely truthful when testifying. Still, you should consider the testimony of these individuals with particular caution. They may have had reason to make up stories or exaggerate what others did because they wanted to help themselves. You must determine whether the testimony of such a witness has been affected by any interest in the outcome of this case, any prejudice for or against Mr. Edwards, or by any of the benefits he may hope to receive from the government. You should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict any defendant upon the unsupported testimony of such a witness unless you believe that testimony beyond a reasonable doubt.

AUTHORITY: First Circuit Criminal Pattern Jury Instructions §2.03. The final two sentences are taken verbatim from Fifth Circuit Pattern Jury Instructions § 1.14.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 12

SPOLIATION

If you find that Andrew Young destroyed or obliterated a document that he knew would be relevant to a contested issue in this case and knew at the time he did so that there was a potential for prosecution, then you may infer (but are not required to infer) that the contents of the destroyed evidence were unfavorable to Andrew Young.

AUTHORITY: Hornby's 2011 Revision to Pattern Criminal Jury Instructions (2011) §2.43 ("Spoliation").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 13

EXPERT WITNESS

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter. But that doesn't mean you must accept the witness' opinion. As with any other witness' testimony, you must decide for yourself whether to rely upon the opinion.

AUTHORITY: Eleventh Circuit Pattern Criminal Jury Instruction 7 (citing United States v. Johnson, 575 F.2d1347, 1361 (5th Cir. 1978)).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 14

"KNOWINGLY AND WILLFULLY"

Not every violation of the law is a crime. Some crimes are committed whenever a person does something that is prohibited, but other crimes do not occur unless a person does something that is prohibited and intentionally broke the law. Most of you, for example, are aware of the laws against speeding, which do not require that you intentionally violated the law to be convicted. If you drive your car over the speed limit, you can receive a ticket even if you are mistaken as to the law and thought the speed limit was higher than it really was or if you simply did not realize that you were driving as fast as you were. A mistake or good faith belief that you were not breaking the speed limit would not be a valid defense. But the crimes alleged in this case are different from the speeding laws.

The campaign finance violations alleged in Counts 2-5 and the making a false statement to the government charge in Count 6 all require that Mr. Edwards violated the law "knowingly and willfully." That means that even if you find that Mr. Edwards did violate the campaign finance laws or he caused someone to make a false statement to the government, that would not be enough for you to convict him on any of these charges. To convict Mr. Edwards on these charges, not only would you have to find that he in fact violated the law, you also would have to find that he violated the law "knowingly and willfully." The purpose of adding the words "knowingly" and "willfully" is to insure that no one will be convicted for an act done because of mistake or accident or other innocent reason.

The word "knowingly," as used in the crime charged here, means that the act was done voluntarily and purposefully and not because of a mistake or accident. The word "willfully," as used in the crime charged, means that the act was committed by a defendant voluntarily, with knowledge that it was prohibited by law and with the purpose of violating the law, and not by mistake or accident or in good faith.

AUTHORITY: United States v. Dornhoffer, 859 F.2d 1195, 1199 (4th Cir. 1988) (affirming instruction: "The purpose of adding the word knowingly is to insure that no one will be convicted for an act done because of mistake or accident or other innocent reason."); United States v. Carrier, 344 F.2d 42, 45 (4th Cir. 1965) (upholding instructions that "The word, 'knowingly,' as used in the crime charged here, means that the act was done voluntarily and purposefully and not because of a mistake or accident. . . . The word "willfully," as used in the crime charged, means that the act was committed by a defendant voluntarily, with knowledge that it was prohibited by law and with the purpose of violating the law, and not by mistake or accident or in good faith."); United States v. Gomez-Garcia, 1997 WL 205380, at *1 (4th Cir. Apr. 28, 1997) (affirming instruction that "the term willfully as used here means voluntarily and intentionally and with the specific intent to disobey or to disregard the law"); 10/26/11 Tr. at 54 (statement of AUSA Harbach) ("[The statute requires that the offense be committed knowingly and willfully. That's what the statute requires. That's what the indictment alleges, and so we're going to have to prove at trial, that Edwards knew all the facts and we're going to have to prove at trial that he knew that his course of conduct was against the law. . . .").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 15

DEFENSE: GOOD FAITH

Because an essential element of the crimes charged is that Mr. Edwards acted with a corrupt intent, it follows that good faith on the part of Mr. Edwards is a complete defense to the charges. An honest mistake in judgment or an honest error in fundraising does not rise to the level of criminal conduct. Good faith is simply inconsistent with joining a criminal conspiracy, knowingly and willfully accepting illegal campaign contributions or knowingly and willfully causing a false statement to be made to the government. The burden of proving good faith does not rest with Mr. Edwards because a defendant does not have an obligation to prove anything in this case. It is the government's burden to prove beyond a reasonable doubt that Mr. Edwards is guilty and did not act with good faith.

AUTHORITY: United States v. Crumbliss, 58 Fed. App'x 577, 582 (4th Cir. 2003) (affirming instruction that "[t]he good faith of the defendant is a complete defense to both counts one and two of the indictment because good faith is simply inconsistent with knowingly and willfully converting, embezzling and intentionally misapplying property" and "an honest mistake in judgment or an honest error in management does not rise to the level of criminal conduct"); United States v. Henry, 136 F.3d 12, 17 n.3 (1st Cir. 1998) (affirming a good faith instruction that included in part: "The burden of proving good faith does not rest with the defendant because the defendant does not have an obligation to prove anything in this case. It is the government's burden to prove beyond a reasonable doubt that the defendant is guilty of conspiracy.").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 16

AGENCY

In this case, the government has charged that Andrew Young was acting as the agent for Mr. Edwards in requesting and receiving the money claimed to be a campaign "contribution," a phrase that I will define for you in a moment. Agency is the relationship which results when one person authorizes another person to act for him. To sustain this claim of agency, the government must prove beyond a reasonable doubt the following things:

First, that Mr. Edwards gave Andrew Young the authority to act on his behalf in seeking and receiving any money the government alleges to be campaign contributions;

Second, that the acts by Andrew Young were committed within the authority or scope of his agency for Mr. Edwards; in other words, that Andrew Young did not act outside of his authority or scope; and

Third, that Andrew Young intended to benefit Mr. Edwards.

A person may be the agent of another for one purpose, but not for another. The fact that Andrew Young may have acted on Mr. Edwards' behalf and at his request on some matters, does not mean that he is Mr. Edwards' agent for all matters. To find that Andrew Young's acts were the acts of Mr. Edwards, you must find that he was specifically instructed and authorized to perform those acts in Mr. Edwards' name and did not exceed the authority that he was given.

AUTHORITY: Adapted from Seventh Circuit Pattern Federal Jury Instructions §5.03; Federal Election Commission, Coordinated Communications and Independent Expenditures Brochure 2 (2011) ("To be an 'agent' of a candidate . . . for the purpose of determining whether a communication is coordinated, a person must have actual authorization, either express or implied, from a specific principal to engage in specific activities, and then engage in those activities on behalf of that specific principal.").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 17

LIMITATIONS ON AGENCY

If you find that Andrew Young was the agent of Mr. Edwards, that does not necessarily mean that Mr. Edwards is criminally responsible for everything that Mr. Young did in the course of that agency. As I just instructed you, Counts 2 through 6 require the government to prove that Mr. Edwards committed a crime "knowingly and willfully" and good faith is a complete defense to all of the charges against him. Mr. Edwards could not "knowingly and willfully" cause Mr. Young to commit a crime, if he did not know that Mr. Young would commit a crime by doing what Mr. Edwards authorized him to do on his behalf. Similarly, if Mr. Edwards believed in good faith that Mr. Young would not commit a crime by doing what Mr. Edwards asked of him, Mr. Edwards would have a complete defense. For example, if Mr. Edwards asked his agent to go to the store and get him office supplies, that would not be a crime if Mr. Edwards believed in good faith that his agent would pay for them. If the agent went to the store and stole the office supplies, Mr. Edwards could not be convicted of "knowingly and willfully" causing the theft if he did not know that his agent would steal the office supplies.

AUTHORITY: See supra Authority for Proposed Jury Instruction Nos. 14, 15 ("Knowingly and Willfully" and "Good Faith").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 18

FEDERAL ELECTION CAMPAIGN ACT --

RELATIONSHIP TO FIRST AMENDMENT

The First Amendment protects our freedom to speak on political issues, including the freedom of an American citizen to campaign for elected office and every American enjoys the right to speak in favor of the candidates they support or against those they oppose. Communicating political speech often requires money, such as buying air time to broadcast campaign commercials on television. A candidate has the right to spend as much of their own money on their own campaign as they would like. Similarly, an individual or even a corporation may spend as much money as they would like in support of a candidate, so long as the individual or corporation does not coordinate their spending with the candidate or campaign they support. In other words, the federal government has no right to tell a candidate how much of his own money he can spend on his own campaign and the federal government has no right to tell individuals how much money they can spend advocating on behalf of a candidate, so long as that spending is not coordinated with the candidate or his campaign.

By contrast, the government does have the right to limit campaign contributions that individuals or corporations may make directly to a candidate's campaign. At the time Mr. Edwards was campaigning to be President of the United States in the 2008 election, the maximum donation that an individual could make to a federal candidate was $2,300 in a calendar year. Such campaign "contributions" include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of

influencing any election for Federal office." A candidate who knowingly and willfully accepted $25,000 or more in campaign contributions from a single person in a calendar year could be charged with a felony.

AUTHORITY: Buckley v. Valeo, 424 U.S. 1, 80 (1976)); North Carolina Right to Life v. Leake, 525 F.3d 274, 281 (4th Cir. 2008); Dkt. 106 at 7 (government argues that expert testimony as to the scope of the campaign finance laws is "properly reserved for the Court" and is "among the subjects covered in this Court's charge to the jury").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 19

FEDERAL ELECTION CAMPAIGN ACT -- UNAMBIGUOUSLY RELATED

Because of the First Amendment, campaign finance laws may constitutionally regulate only those actions that are unambiguously related to the campaign of a particular candidate. In this case, the government argues that the payments made by Ms. Mellon and Mr. Baron are regulated by the campaign finance laws because it claims they were campaign contributions. For you to find that those payments were campaign contributions, the government must convince you beyond a reasonable doubt that the payments were unambiguously related to Mr. Edwards' campaign to become the President of the United States. Therefore, if you conclude that Ms. Mellon or Mr. Baron made the payments for a reason that is not campaign-related, for example to prevent Mrs. Edwards from being hurt by learning of the affair or to help Ms. Hunter through her pregnancy, then the payments are not subject to the campaign finance laws and Mr. Edwards could not be convicted either for accepting the payments or for failing to report the payments to the Federal Election Commission.

AUTHORITY: North Carolina Right to Life v. Leake, 525 F.3d 274, 281 (4th Cir. 2008) ("[A]fter Buckley, campaign finance laws may constitutionally regulate only those actions that are 'unambiguously related to the campaign of a particular candidate.'") (quoting Buckley v. Valeo, 424 U.S. 1, 80 (1976)).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 20

FEDERAL ELECTION CAMPAIGN ACT -- CAMPAIGN CONTRIBUTION

In addition to restricting to $2,300 the amount an individual could directly give the campaign, the campaign finance laws also prevent those limits from being circumvented in some instances. The campaign finance laws will treat what are often called coordinated expenditures and the payment of a candidate's personal use expenses as campaign contributions, even though no money or anything of value is directly given to the campaign.

As I explained earlier, an individual is free to make as large an expenditure as they would like in advocating for a candidate, so long as that expenditure is not coordinated with the candidate or the campaign. An expenditure includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." An "expenditure" by a third-party will only be considered a "contribution" to a candidate or his campaign when it is made "in cooperation, consultation, or concert, with, or at the request or suggestion of a candidate, his authorized political committees, or their agents." For example, a political campaign could not circumvent the campaign contribution limits by incurring a campaign-related expenses, such as buying advertising in a newspaper, and then asking a third-party to pay the newspaper for that expense directly. Any payment of such unambiguously campaign-related expenses in coordination with the campaign would be a coordinated expenditure, and such payments would be subject to the $2,300 campaign contribution limit.

Similarly, campaign contribution limits cannot be circumvented by having a third-party pay for a candidate's personal use expenses to free up money that the candidate could then use to fund his campaign. A "personal use" expense is "any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office," such as the payment of a home mortgage or utilities. By regulation, the Federal Election Commission explains: "Notwithstanding that the use of funds for a particular expense would be a personal use under this section, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution . . . to the candidate unless the payment would have been made irrespective of the candidacy."

The personal use expense regulation only applies to the candidate's personal use expenses. It does not apply to the payment of other people's expenses, even if the candidate encourages third-parties to pay the personal expenses of other people. For example, President Obama encouraged people to donate to charities that would help the victims of the Japanese tsunami and President Bush encouraged people to donate to charities that would help the victims of Hurricane Katrina. Because these actions by President Obama and President Bush did not pay for any personal expense they would be required to make, but merely helped others pay their personal expenses, the personal use expense regulation would not treat the money used to help others as campaign contributions to the Presidents -- even if soliciting the charitable donations improved their image and would assist in their re-election.

In the context of this case, you would have to be convinced beyond a reasonable doubt that the payments made by Ms. Mellon or Mr. Baron satisfied a financial obligation that Mr. Edwards would have been obligated to pay even if he had not been a candidate for federal office. If the government cannot prove beyond a reasonable doubt that Mr. Edwards would have been obligated to pay or would not have paid those expenses if he had not been running for federal office, then you cannot convict him under the theory that Ms. Mellon or Mr. Baron paid Mr. Edwards' personal use expenses.

Even if you find that the payments made by Ms. Mellon or Mr. Baron did satisfy a personal use expense of Mr. Edwards, you may not convict Mr. Edwards unless you also find beyond a reasonable doubt that Ms. Mellon and Mr. Baron would not have made those payment if Mr. Edwards had not been a candidate for federal office. If you find that there is a reasonable possibility that Ms. Mellon or Mr. Baron would have made the payments even if Mr. Edwards was not a candidate for federal office, then you cannot convict Mr. Edwards under the theory that Ms. Mellon or Mr. Baron paid Mr. Edwards' personal use expenses.

AUTHORITY: 2 U.S.C. § 431(8)(A)(i) (defining "contribution"); 2 U.S.C. § 431(9)(A)(i) (defining "expenditure"); 2 U.S.C. § 441a(a)(7)(B)(i) (coordinated expenditures); 2 U.S.C. § 439a(b)(2) (defining "personal use"); 11 C.F.R. § 113.1(g)(6) (personal use expense regulation); North Carolina Right to Life v. Leake, 525 F.3d 274, 281 (4th Cir. 2008) ("[A]fter Buckley, campaign finance laws may constitutionally regulate only those actions that are 'unambiguously related to the campaign of a particular candidate.'") (quoting Buckley v. Valeo, 424 U.S. 1, 80 (1976)); Federal Election Commission, Coordinated Communications and Independent Expenditures Brochure at 2-4 (explaining the three-part test to determine if a coordinated communication is for the purpose of influencing an election).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 21

CAMPAIGN CONTRIBUTION – UNCERTAINTY

As I have instructed you, for you to convict Mr. Edwards of accepting and receiving excessive campaign contributions or failing to report excessive campaign contributions you must find more than that he actually accepted and received or failed to report excessive campaign contributions. Instead, the government must prove beyond a reasonable doubt that Mr. Edwards accepted or failed to report the excessive campaign contributions "knowingly and willfully," with the intent to break the law. If you find that Mr. Edwards did break the law by accepting and receiving excessive campaign contributions or by failing to report those excessive contributions, but you are not convinced beyond a reasonable doubt that he "knowingly and willfully" broke the law, then you must find him "Not Guilty."

One factor for you to consider in deciding whether Mr. Edwards "knowingly and willfully" broke the law is whether the requirements of the law were vague or highly debatable. The more uncertain or debatable a law may be, the more difficult it may be to know whether certain conduct may violate the law. Sometimes the applicability of a law may be very clear in some instances, but not in others. Here, for example, everyone agrees that a check written by Ms. Mellon or Mr. Baron to the John Edwards for President campaign during the election cycle would have been a campaign contribution. But Mr. Edwards argues that it was uncertain or highly debatable whether payments by Ms. Mellon and Mr. Baron to persons other than Mr. Edwards or his campaign to cover

the expenses of Ms. Hunter and the Youngs during Ms. Hunter's pregnancy would be considered campaign contributions to Mr. Edwards' campaign.

If the law is so uncertain or highly debatable that reasonable persons could disagree as to whether those payment would be regulated as a campaign contribution, then Mr. Edwards could not knowingly and willfully violate the law by accepting or failing to report such a payment as a campaign contribution and you must find him "Not Guilty." Even if Mr. Edwards personally believed that such a payment was a campaign contribution, you must find him "Not Guilty" if you find that the law was so uncertain or highly debatable that reasonable people would have believed that such a payment was not a campaign contribution.

AUTHORITY: United States v. Cole, 631 F.3d 146, 152-53 (4th Cir. 2011) (permitting jury to consider legal uncertainty); United States v. Mallas, 762 F.2d 361 (4th Cir. 1985) ("We find that [defendants'] contested business practices raise novel questions of tax liability to which governing law offers no clear guidance. Because the defendants therefore could not have ascertained the legal standards applicable to their conduct, criminal proceedings may not be used to define and punish an alleged failure to conform to those standards."); United States v. Critzer, 498 F.2d 1160, 1162 (4th Cir. 1974) ("It is settled that when the law is vague or highly debatable, a defendant -- actually or imputedly -- lacks the requisite intent to violate it. . . . The obligation to pay is so problematical that defendant's actual intent is irrelevant. Even if she had consulted the law and sought to guide herself accordingly, she could have no certainty as to what the law required.); United States v. Heller, 830 F.2d 150, 154-55 (11th Cir. 1987) (reversing conviction for failure to give a jury instruction based on Critzer that a defendant cannot be convicted if the jury finds the law vague or highly debatable); see also In re McCain, MURs 5712 & 5799, at 14 n.48 (2010) (Election laws "which may appear straightforward and 'well-understood' in theory may become 'confusing' in practical application."); Craig C. Donsanto & Nancy L. Simmons, Federal Prosecution of Election Offenses 135 n.50 (7th ed. 2007) (noting that "[v]iolations of these laws that are committed with lesser intent – including all violations committed negligently or because the offender did not understand the application of the law to his or her conduct – are not federal crimes").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 22

RECEIPT OF CONTRIBUTION

A campaign contribution is not received until it is deposited. For example, if a check were mailed to a campaign headquarters on Monday, it arrived at the campaign headquarters on Wednesday, and was not deposited in the bank until Friday, Friday would be considered the date the campaign contribution was received for purposes of the campaign finance laws. Prior to the deposit of such funds, for example, the donor could cancel the check or the campaign could return the funds and prevent the funds from being received.

AUTHORITY: United States v. Chestnut, 533 F.2d 40, 48 (2d Cir. 1976).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 23

CAMPAIGN CONTRIBUTION – POST-CAMPAIGN CONTRIBUTIONS

I further instruct you that once an individual stops seeking nomination or election for federal office, in this case the nomination of the Democratic Party for the Presidency of the United States, he ceases to be a "candidate" and payments received by such an individual are not deemed for the purpose of influencing that person's election. Therefore, the government must also convince you beyond a reasonable doubt that any money which it claims was a contribution was deposited by Mr. Edwards or someone acting on his behalf at a time when Mr. Edwards was a candidate for President of the United States. If you find that money was received after Mr. Edwards was no longer a candidate, then you must exclude that money from your determination as to whether Mr. Edwards received $25,000 or more in excessive contributions within a calendar year from a specific individual. Payments received after a person is no longer a candidate may be considered by you to determine if payments made before were for the purpose of influencing the election.

AUTHORITY: In re Moran, MUR 5141 (April 17, 2002).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 24

FEDERAL ELECTION CAMPAIGN ACT -- EXPENDITURE FOR OTHER PURPOSES

There has been testimony during the trial that in 2008, Mr. Edwards or others expressed an interest in his being considered to be the candidate for vice president or for attorney general should the Democrats win the election.

I am instructing you that money spent to promote that interest – for Mr. Edwards to be considered for vice president or attorney general – is not charged in this indictment and cannot be the basis for finding those expenditures to be campaign contributions. Therefore, they cannot be the basis for a finding of guilt under the federal election laws in this case.

You may, however, consider this evidence as relevant to a person's intent or motive before Mr. Edwards ended his campaign for president in late January 2008.

As with any evidence, it is up to you as the jury to determine whether to credit or discredit any statement made by a witness on the stand or something a witness on the stand stated someone outside of court said at one time or another. The same considerations of bias, motive and credibility apply.

AUTHORITY: 2 U.S.C. § 231(2) restricts the definition of candidate to a person who is seeking an elective office. There is no federal campaign to be selected the Vice President nominee of a political party, and Attorney General is not an elected position.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 25

COUNT 2 -- FEDERAL ELECTION CAMPAIGN ACT

Count 2 of the indictment accuses Mr. Edwards of accepting and receiving excessive campaign contributions.

For you to find Mr. Edwards guilty of Count 2, the government must prove each and every one of the following elements beyond a reasonable doubt:

(1) First, that Mr. Edwards was a candidate for the Democratic nomination for President of the United States;

(2) Second, that while a candidate for the Democratic nomination for President of the United States, Mr. Edwards knowingly accepted and received $25,000 or more from Rachel Mellon in 2007;

(3) Third, that this money was a contribution within the meaning of the federal campaign finance laws;

(4) Fourth, that Mr. Edwards knew this money was a contribution within the meaning of the federal campaign finance laws; and

(5) Fifth, that Mr. Edwards willfully violated the law in accepting and receiving these contributions, and not because of a mistake or accident or another innocent reason.

If you are convinced that the government has proved all of these elements beyond a reasonable doubt, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 2.02 (defining a crime generally).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 26

COUNT 3 -- FEDERAL ELECTION CAMPAIGN ACT

Count 3 of the indictment accuses Mr. Edwards of accepting and receiving excessive campaign contributions.

For you to find Mr. Edwards guilty of Count 3, the government must prove each and every one of the following elements beyond a reasonable doubt:

(1) First, that Mr. Edwards was a candidate for the Democratic nomination for President of the United States;

(2) Second, that while a candidate for the Democratic nomination for President of the United States, Mr. Edwards knowingly accepted and received $25,000 or more from Rachel Mellon in 2008;

(3) Third, that this money was a contribution within the meaning of the federal campaign finance laws;

(4) Fourth, that Mr. Edwards knew this money was a contribution within the meaning of the federal campaign finance laws; and

(5) Fifth, that Mr. Edwards willfully violated the law in accepting and receiving these contributions, and not because of a mistake or accident or another innocent reason.

If you are convinced that the government has proved all of these elements beyond a reasonable doubt, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 2.02 (defining a crime generally).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 27

COUNT 4 -- FEDERAL ELECTION CAMPAIGN ACT

Count 4 of the indictment accuses Mr. Edwards of accepting and receiving excessive campaign contributions.

For you to find Mr. Edwards guilty of Count 4, the government must prove each and every one of the following elements beyond a reasonable doubt:

(1) First, that Mr. Edwards was a candidate for the Democratic nomination for President of the United States;

(2) Second, that while a candidate for the Democratic nomination for President of the United States, Mr. Edwards knowingly accepted and received $25,000 or more from Fred Baron in 2007;

(3) Third, that this money was a contribution within the meaning of the federal campaign finance laws;

(4) Fourth, that Mr. Edwards knew this money was a contribution within the meaning of the federal campaign finance laws; and

(5) Fifth, that Mr. Edwards willfully violated the law in accepting and receiving these contributions, and not because of a mistake or accident or another innocent reason.

If you are convinced that the government has proved all of these elements beyond a reasonable doubt, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 2.02 (defining a crime generally).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 28

COUNT 5 -- FEDERAL ELECTION CAMPAIGN ACT

Count 5 of the indictment accuses Mr. Edwards of accepting and receiving excessive campaign contributions.

For you to find Mr. Edwards guilty of Count 5, the government must prove each and every one of the following elements beyond a reasonable doubt:

(1) First, that Mr. Edwards was a candidate for the Democratic nomination for President of the United States;

(2) Second, that while a candidate for the Democratic nomination for President of the United States, Mr. Edwards knowingly accepted and received $25,000 or more from Fred Baron in 2008;

(3) Third, that this money was a contribution within the meaning of the federal campaign finance laws;

(4) Fourth, that Mr. Edwards knew this money was a contribution within the meaning of the federal campaign finance laws; and

(5) Fifth, that Mr. Edwards willfully violated the law in accepting and receiving these contributions, and not because of a mistake or accident or another innocent reason.

If you are convinced that the government has proved all of these elements beyond a reasonable doubt, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 2.02 (defining a crime generally).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 29

CAMPAIGN CONTRIBUTION – VENUE

To find Mr. Edwards guilty of accepting excessive campaign contributions in any of Counts 2 through 5, you must find that the campaign contributions at issue were accepted and received in the Middle District of North Carolina. This is a requirement the law calls venue, which essentially asks whether this is an allegation that should be tried here in the Middle District of North Carolina or should be tried somewhere else. I instruct you that Chapel Hill, North Carolina is in the Middle District of North Carolina, but that Raleigh, North Carolina is not in the Middle District of North Carolina. Rather, Raleigh is in the Eastern District of North Carolina.

To establish venue for the offense in Count 2 through 5, the government must prove by a preponderance of the evidence or, in other words, that it is more likely true than not, that the money from Rachel Mellon or Fred Baron, as the case may be, was received in the Middle District of North Carolina. If you conclude that the money was not received in the Middle District of North Carolina, you should acquit Mr. Edwards on that ground and you do not need to decide whether or not the receipt of that money was a crime. If you conclude that the money was received in the Middle District of North Carolina, you will have decided that venue is appropriate and you must then consider whether the receipt of the money was a crime.

In deciding whether the receipt of the money was a crime, the burden of proof is on the government to prove that Mr. Edwards is guilty. Unlike the question of venue that you decide under the preponderance of the evidence or more likely than not standard, the

government is held to a higher standard in proving that what occurred in the venue actually is a crime. The government has the burden of proving to you that Mr. Edwards is guilty of the crime beyond a reasonable doubt.

AUTHORITY: U.S. Constitution, Art. III, § 2; Sixth Amendment.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 30

AIDING AND ABETTING -- COUNTS 1-5

Aiding and abetting cannot be a basis for liability under Counts 2-5, concerning the acceptance of illegal campaign contributions. It is only a crime for a candidate to accept illegal campaign contributions and Mr. Edwards is the only candidate alleged in the indictment to have accepted illegal campaign contributions. If the government is unable to prove beyond a reasonable doubt that Mr. Edwards knowingly and willfully accepted and received the allegedly illegal campaign contributions alleged in Counts 2-5, then no crime has been committed and Mr. Edwards cannot be convicted on those Counts under an aiding and abetting theory.

AUTHORITY: MTD No. 5.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 31

FALSE STATEMENTS -- COUNT 6

Count 6 of the indictment charges Mr. Edwards with falsifying, concealing, or covering up by trick, scheme, or device a material fact and causing the making of false statements to an agency of the federal government.

For you to find Mr. Edwards guilty of this offense, you must find that the government has proved each of the following elements beyond a reasonable doubt:

(1) First, that Mr. Edwards knowingly and willfully concealed from the John Edwards for President Committee campaign contributions from Rachel Mellon and Fred Baron to Mr. Edwards for the 2008 primary election for President of the United States;

(2) Second, that the person from whom Mr. Edwards concealed the fact that campaign contributions had been made, the treasurer of his campaign committee, had a legal duty to disclose the fact to the Federal Election Commission, and that Mr. Edwards knew that the treasurer had this legal duty;

(3) Third, that the fact concealed by Mr. Edwards, that campaign contributions had been made, was material to the Federal Election Commission; and

(4) Fourth, that the subject matter involved was within the jurisdiction of the executive branch of the government of the United States.

If you have found Mr. Edwards "Not Guilty" with respect to having knowingly and willfully accepted an excessive campaign contribution in Count 2, Count 3, Count 4 or Count 5, you cannot find him guilty of knowingly and willfully failing to report such a payment as a campaign contribution in Count 6.

Now I will give you more detailed instructions on some of these terms.

(A) A statement is “false” if it was untrue when it was made, and the defendant knew it was untrue at that time.

(B) A “material” statement or representation is one that has the natural tendency to influence or is capable of influencing a decision or function of the Federal Election Commission.

(C) As I explained to you earlier, an act is done “knowingly and willfully” if it is done voluntarily and intentionally, and not because of mistake or some other innocent reason.

(D) A matter is “within the jurisdiction of the executive branch of the United States government” if the Federal Election Commission has the power to exercise authority in that matter.

If you are convinced beyond a reasonable that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find Mr. Edwards not guilty of this charge.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 13.02 (adapted).

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 32

FALSE STATEMENTS – VENUE

To find Mr. Edwards guilty of causing the making of false statements in Count 6, you must find that Mr. Edwards caused, in the Middle District of North Carolina, the John Edwards for President Committee to submit false reports to the Federal Election Commission. The government must prove this by a preponderance of the evidence or, in other words, that it is more likely true than not. If you conclude that he did not cause, in the Middle District of North Carolina, the John Edwards for President Committee to make a false report, then you should acquit Mr. Edwards on that ground. Unlike the question of venue that you decide under the preponderance of the evidence or more likely than not standard, the government is held to a higher standard in proving that what occurred in the venue actually is a crime. The government has the burden of proving to you that Mr. Edwards is guilty of the crime beyond a reasonable doubt.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 33

AIDING AND ABETTING -- COUNT 6

For you to find Mr. Edwards guilty of Count 6, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is called an aider and abettor.

But for you to find Mr. Edwards guilty of causing campaign contributions to be falsely reported to the Federal Election Commission, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

(1) First, that the crime of making a false statement to the Federal Election Commission was committed;

(2) Second, that Mr. Edwards helped to commit the crime or encouraged someone else to commit the crime; and

(3) Third, that Mr. Edwards knowingly and willfully helped commit or encourage the crime.

Proof that Mr. Edwards may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that Mr. Edwards did something to help or encourage the crime with the intent that the crime be committed.

If you are convinced that the government has proved all of these elements beyond a reasonable doubt, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you cannot find Mr. Edwards guilty of causing false statements to be made to the Federal Election Commission as an aider and abettor.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 4.01; United States v. Lelez, 27 Fed. Appx 179, 182 (4th Cir. 2001) (affirming instruction that a defendant's "mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime.")

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 34

COUNT 1 -- CONSPIRACY

Count 1 of the indictment accuses Mr. Edwards of conspiring with Andrew Young, Fred Baron, Rachel Mellon and others, to accept and receive excessive campaign contributions from both Mr. Baron and Ms. Mellon and with conspiring to file false and misleading campaign finance reports with the Federal Election Commission. It is a crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal.

A conspiracy is a kind of criminal partnership. For you to find Mr. Edwards guilty of the conspiracy charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

(1) First, that two or more persons conspired, or agreed, to intentionally commit the crime of accepting and receiving illegal campaign contributions or causing false campaign finance reports to be filed with the Federal Election Commission in violation of federal law;

(2) Second, that Mr. Edwards knowingly and voluntarily joined the conspiracy with the specific intent to further the unlawful purposes of the conspiracy; and

(3) Third, that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find Mr. Edwards guilty of the conspiracy charge.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 3.01A; Horn's Federal Criminal Jury Instructions for the Fourth Circuit § 2.52.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 35

CONSPIRACY – AGREEMENT

With regard to the first element -- a criminal agreement -- the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the crimes of accepting and receiving illegal campaign contributions or causing false campaign finance reports to be filed with the Federal Election Commission in violation of federal law.

This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit the crime of accepting illegal campaign contributions or causing false campaign finance reports to be filed with the Federal Election Commission in violation of federal law. This is essential.

An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you beyond a reasonable doubt that such facts and circumstances existed in this particular case.

One more point about the agreement. The indictment accuses Mr. Edwards of conspiring to commit two federal crimes. The government does not have to prove Mr. Edwards agreed to commit both of these crimes. But the government must prove an agreement to commit at least one of them beyond a reasonable doubt for you to return a guilty verdict on the conspiracy charge. But to return a verdict of guilty, you must unanimously agree on which of the two crimes Mr. Edwards conspired to commit.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 3.02; Eleventh Circuit Pattern Jury Instructions (Criminal Cases) 13.2.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 36

CONSPIRACY – CONNECTION TO THE CONSPIRACY

If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that Mr. Edwards knowingly and voluntarily joined that agreement. You must consider Mr. Edwards separately in this regard. To convict Mr. Edwards, the government must prove that he knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

This does not require proof that Mr. Edwards knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that Mr. Edwards played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

But proof that Mr. Edwards simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because Mr. Edwards may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that Mr. Edwards joined a conspiracy. But without more they are not enough.

A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the

government to convince you beyond a reasonable doubt that such facts and circumstances existed in this particular case.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 3.03.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 37

CONSPIRACY – OVERT ACTS

The third element that the government must prove is that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

The indictment lists overt acts. The government does not have to prove that all these acts were committed, or that any of these acts were themselves illegal.

But the government must prove beyond a reasonable doubt that at least one of these acts was committed by a member of the conspiracy, and that it was committed for the purpose of advancing or helping the conspiracy. This is essential.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 3.04.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 38

CONSPIRACY – VENUE

In order to find Mr. Edwards guilty of Count 1, you must find that the conspiracy took place in the Middle District of North Carolina. To establish venue for the offense in Count 1, the government must prove by a preponderance of the evidence or, in other words, that it is more likely true than not, that the agreement, or one of the overt acts, took place in the Middle District of North Carolina. Unlike the question of venue that you decide under the preponderance of the evidence or more likely than not standard, the government is held to a higher standard in proving that what occurred in the venue actually is a crime. The government has the burden of proving to you that Mr. Edwards is guilty of the crime beyond a reasonable doubt.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 39

CONSPIRACY – MULTIPLE CONSPIRACIES

The indictment charges that Mr. Edwards was part of one single conspiracy to commit the crimes of accepting and receiving illegal campaign contributions or causing false campaign finance reports to be filed with the Federal Election Commission in violation of federal law.

Although Mr. Edwards argues that there was no conspiracy of any kind, he also argues that what the government tried to prove at trial were really two separate conspiracies. Mr. Edwards argues that even if the government were correct that there was a conspiracy to accept and receive illegal campaign contributions and to illegally fail to report those contributions, those were two separate conspiracies. One involving alleged campaign contributions from Ms. Mellon and the other involving alleged campaign contributions from Mr. Baron. Mr. Edwards argues that Ms. Mellon and Mr. Baron did not conspire to assist Mr. Edwards in accepting and receiving campaign contributions from the other or in causing the other's alleged campaign contributions to be falsely reported to the Federal Election Commission.

To convict Mr. Edwards of the conspiracy charge, the government must convince you beyond a reasonable doubt that he was a member of the single conspiracy charged in the indictment. If the government fails to prove that there was a single conspiracy involving campaign contributions from both Ms. Mellon and Mr. Baron, then you must find Mr. Edwards not guilty of the conspiracy charge, even if you find that he was a member of two separate conspiracies, one involving Ms. Mellon and the other involving

Mr. Baron, to accept illegal campaign contributions and make false statements to the Federal Election Commission. Proof that Mr. Edwards was a member of some conspiracy other than the single conspiracy charged in the indictment is not enough to convict.

AUTHORITY: Sixth Circuit Pattern Criminal Jury Instruction § 3.08 (adapted); United States v. Niemi, 579 F.3d 123, 126 (1st Cir. 2009) ("It is true that "a court should instruct on the issue [of multiple conspiracies] 'if, on the evidence adduced at trial, a reasonable jury could find more than one such illicit agreement, or could find an agreement different from the one charged.'") (quoting United States v. Balthazard, 360 F.3d 309, 315 (1st Cir. 2004) (quoting United States v. Brandon, 17 F.3d 409, 449 (1st Cir.1994)); United States v. Pacheco, 434 F.3d 106, 117 (1st Cir. 2006) ("If, on the evidence adduced at trial, a reasonable jury could find more than one . . . illicit agreement, or could find an agreement different from the one charged, a multiple conspiracy instruction is proper and should be given if requested.") (quoting United States v. Boylan, 898 F.2d 230, 243 (1st Cir.1990)); see also Fifth Circuit Pattern Jury Instruction § 2.21; Ninth Circuit Pattern Jury Instruction § 8.22.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 40

AIDING AND ABETTING – COUNT 1

Aiding and abetting cannot be considered a basis for liability for Count 1. With respect to the conspiracy charge in Count 1, you must find beyond a reasonable doubt that Mr. Edwards actually joined the single conspiracy that is charged. If such a conspiracy existed, it is not sufficient that Mr. Edwards may have aided or abetted those in the conspiracy.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 41

DEFENSE: THEORY OF THE CASE

[TO BE SUBMITTED AT THE CLOSE OF THE EVIDENCE]

AUTHORITY: Davignon v. Hodgson, 524 F.3d 91, 109 (1st Cir. 2008) ("In criminal cases we have said that a defendant has a right to an instruction on his theory of the case when the theory is supported by the record and is valid."); United States v. Sampson, 486 F.3d 13, 36 (1st Cir. 2007) ("[A] defendant generally is entitled to a requested instruction on his theory of the case as long as that theory is supported by the evidence and the proffered instruction correctly states the law."); United States v. Thomas, 895 F.3d 51, 55 (1st Cir. 1990) ("It is reversible error for the court to refuse a request to instruct as to defendant's theory of the case if there is evidence to support it.").

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 42

FOREPERSON'S ROLE; UNANIMITY

I come now to the last part of the instructions, the rules for your deliberations.

When you retire you will discuss the case with the other jurors to reach agreement if you can do so. You shall select your foreperson to preside over your deliberations, and your foreperson will speak for you here in court. Your verdict must be unanimous, meaning each of you must agree to each element of each charge as to Mr. Edwards.

AUTHORITY: Judge Hornby's Revisions to the First Circuit Pattern Criminal Jury Instructions § 6.01.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 43

CONSIDERATION OF EVIDENCE AND REACHING AGREEMENT

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

AUTHORITY: Judge Hornby's Revisions to the First Circuit Pattern Criminal Jury Instructions §§ 6.02 & 6.03.

MR. EDWARDS' PROPOSED JURY INSTRUCTION NO. 44

COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the jury officer signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me on anything concerning the case except by a signed writing, and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. If you send out a question, I will consult with the parties as promptly as possible before answering it, which may take some time. You may continue with your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.

AUTHORITY: Judge Hornby's Revisions to the First Circuit Pattern Criminal Jury Instructions § 6.05.