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Is John Edwards a criminal or just a jerk?

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Not yet having all the facts available, it is hard to say much definitive about Edwards' case. But as a general rule, people should keep in mind that many people do many things to help politicians that are not campaign finance contributions. They might put legislators in touch with mortgage brokers who can get them a favorable rate. They might give a politician who is out of office, but planning to run again, a job or a seat on a corporate board to provide income, or on a non-profit board to make the politician seem more attractive to voters. I am not defending such favoritism. But not every favor is a campaign contribution.

Edwards is not a man who deserves any sympathy, and it is certainly possible that his actions, and those of his supporters, might have violated other federal laws or, had Edwards still been in office, Senate ethics rules. But the question here is not sympathy for Edwards, but possible prosecutorial overreach that is itself a form of abuse of power.

It is hard to see how money that is neither given to the campaign nor spent on the campaign violates campaign finance laws - even if those paying off Hunter hoped that the payments would benefit Edwards. The usual test under the Federal Election Campaign Act for whether something counts as a campaign expenditure is whether the obligation would have existed but for the campaign. If so, it is not a campaign expenditure. Thus Edwards' \$400 hair cuts may helped him in his campaigns (at least until the public found out how much they cost) but they were not a campaign expenditure, because the obligation would have existed anyway. Payments to Hunter may have benefited Edwards in his run for office, but they do not appear to have been campaign expenditures.

Prosecutors seem to be relying on the vague language that the payments to Hunter were intended "to influence" a campaign. But almost anybody who cares about politics at all does all kinds of things intended to influence campaigns, and they are not subject to campaign finance laws.

In recent years prosecutors have become increasingly zealous in their efforts to squeeze all kinds of unethical conduct into the rubric of campaign finance and honest service laws. Recently we've seen the high profile verdicts against former Alabama Governor Don Siegelman and former Alaska Senator Ted Stevens vacated due to various forms of

prosecutorial overreach. The public is not well-served by the likes of John Edwards - but nor is it well served by ambitious, overly-zealous prosecutors who stretch and abuse our laws in pursuit of high-profile convictions. We should make sure this case is not an example of the latter.