

EXHIBIT A

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

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

AFFIDAVIT OF ROBERT LENHARD

The undersigned, being duly sworn, avers and states that:

1. I am Robert Lenhard, a citizen and resident of the State of Maryland and an attorney licensed to practice law under the laws of the District of Columbia. I am currently "Of Counsel" in the Washington, D.C. office of Covington & Burling, LLP, where I am a member of the Election and Political Law practice group.

2. In my practice, I routinely provide advice and counsel to corporations, trade associations, politically active nonprofit groups, and to candidates in complying with federal and state campaign finance and lobbying disclosure laws.

3. I am a graduate of the Johns Hopkins University where I received my B.A. with honors in 1981 and the University of California at Los Angeles School of Law, where I received my J.D. in 1984.

4. Over the past twenty years, I have provided legal advice to organizations active in the political process at the federal, state and local levels of government and have represented clients before the Federal Election Commission ("FEC") and state regulatory agencies in enforcement matters, rulemakings and in seeking advisory opinions. This includes having served as Associate General Counsel for the American Federation of State, County, and Municipal Employees, and as Of Counsel at Covington & Burling, LLP.

5. In 2006, I served as the Vice-Chairman of the FEC. In 2007, I served as the Chairman of the FEC. During my service as Chair and Vice-Chair, the FEC processed some of the largest enforcement cases in the agency's history, increased the collection of penalties, and completed more than 40 audits of political committees. During these two years, the FEC also instituted a number of reforms, including adoption of a special enforcement process for sua sponte submissions, a safe harbor provision for

reporting violations resulting from embezzlement, and a pilot program for pre-probable cause hearings in significant enforcement cases.

6. In 2008-2009, I led the Presidential Transition Team that reviewed the FEC for the incoming Obama Administration.

7. I have testified before Congress and given numerous invited speeches on the topic of campaign finance law.

8. At the request of the attorneys for John Edwards, I began a review of this matter in November 2010. I was asked to provide an opinion as to whether monies provided by Mrs. Rachel Mellon and Mr. Fred Baron to support Rielle Hunter in 2007 and 2008 were subject to the restrictions imposed by the federal campaign finance laws. As part of my review, I was asked to assume that John Edwards was aware of all material facts relating to these payments, that John Edwards requested or suggested the payments, and that the purpose of the payments was to provide for Rielle Hunter's support and hide her affair with Senator Edwards from the press. I further assumed that Mrs. Mellon and Mr. Baron were motivated to make the payments, in part, by a desire for Senator Edwards to secure the Democratic Party's nomination in the 2008 presidential election. I was informed that the payments by Mrs. Mellon approximated \$725,000 and those by Mr. Baron exceeded \$100,000. I was further informed that Mrs. Mellon's payments were by checks made out to Bryan Huffman that were then endorsed over to and deposited into a bank account by Andrew Young's wife, Cheri Pfister Young, using her maiden name. I was also informed that Fred Baron's payments took the form of either supplying or paying for plane flights and accommodations.

9. In connection with my review, I conducted research on the reported cases, FEC regulations, agency enforcement actions, advisory opinions, other material from the FEC, and my own experience as the Vice-Chair of the FEC in 2006 and its Chair in 2007.

10. Based upon my knowledge, training and experience, and on the research that I conducted, it is my opinion that the facts as I assumed them to be do not constitute a knowing and willful violation of the federal campaign finance law, nor would they be understood to be a civil violation of the law. Specifically, it is my opinion that these payments by Mrs. Mellon and Mr. Baron are not campaign contributions nor are they third-party expenditures that would be considered campaign contributions if coordinated with Senator Edwards. In addition, it is my opinion that where the FEC to consider the matter, the agency would conclude that these payments are not covered by the agency's regulation at 11 C.F.R. §113.1(g)(6) that prohibits a third party from paying the "personal use" expenses of a candidate.

11. It is further my opinion that a person familiar with the federal campaign finance law in 2007 and 2008, or today, would not have understood these payments to

have been in clear violation of those laws. Rather, it is my opinion that a person familiar with the campaign finance law in 2007 and 2008, or today, would conclude that these payments would not constitute the receipt of "campaign contributions."

12. During the course of my research, I was unable to find any case or matter with precedential value that states that the conduct described in the Indictment - - or any conduct similar to it - - constitutes a violation of the federal campaign finance laws.

13. I communicated this opinion to counsel for Senator Edwards in December 2010. Subsequently, on April 13, 2011, and at the request of the Department of Justice, I agreed to be interviewed by Government agents and attorneys. During the course of my interview, I expressed the opinions set forth in this affidavit.

14. I subsequently signed a letter to the Department of Justice outlining the opinions that I have expressed in this Affidavit. A copy of this letter is attached to this Affidavit as **Exhibit 1**.

15. Further, as set forth in Exhibit 1, it is my opinion that the theory on which the Government is basing this prosecution is without precedent in federal campaign finance law.

This affidavit is based upon my personal knowledge and is made by me in support of a Motion to Dismiss filed in this matter.

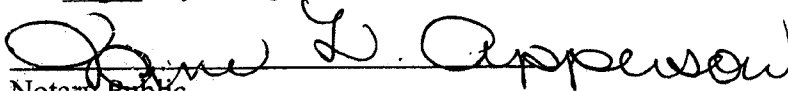
This 6 day of September, 2011.



Robert Lenhard

Sworn to and subscribed before me

this 6th day of September, 2011.



Notary Public

Jane L. Apperson

My Commission Expires **Notary Public District of Columbia**
My Commission Expires: March 31, 2014

(S E A L)

EXHIBIT 1

April 26, 2011

Jack Smith
Chief
Public Integrity Section
Department of Justice
1400 New York Ave, NW
Suite 12
Washington, DC 20005

Dear Mr. Smith:

As you may know, we have been retained as expert witnesses to advise Senator Edwards and his lawyers on the campaign finance laws. We both previously served as Chairman of the Federal Election Commission. One of us (Scott Thomas) worked at the FEC for 30 years, including almost 20 years as a Commissioner. We both currently practice election law and regularly advise clients on the scope of campaign finance statutes and regulations.

We were asked to provide an opinion as to whether payments provided by Mrs. Rachel Mellon and Mr. Fred Baron to defray the expenses of Ms. Rielle Hunter during 2007 and January 2008 were made in violation of the federal campaign finance laws. As you may also know, we met with federal prosecutors and law enforcement agents. One meeting was on April 13, 2011 (Lenhard), and the other was on April 20, 2011 (Thomas). We shared with them our opinion about whether, based on the facts in the light most favorable to prosecutors (regardless of how strongly they would be contested), there was a civil or criminal violation of the federal campaign finance laws.

Counsel for Senator Edwards requested that both interviews be tape-recorded so that there would be a clear record of our statements. The prosecutors and agents declined this request. Since the request to record our interviews was denied, we are writing you this letter. The purpose of this letter is – in summary form – to inform you directly of our conclusions.

Let us state at the outset that we have based our legal opinion on facts as we understand the government believes them to be, i.e., that former Senator John Edwards, either directly or through an intermediary, approached both Mrs. Mellon and Mr. Baron and asked them to provide financial assistance in connection with a very personal matter; that this solicitation occurred during Senator Edwards' campaign for the Democratic Party nomination for the Presidency; that the payments were motivated in part by a desire to elect Senator Edwards to that position; and that Mrs. Mellon and Mr. Baron then made such payments in a total amount well in excess of \$750,000.

It is our view that, under the law as developed by the United States courts and the Federal Election Commission, these payments would not be considered to be either campaign contributions or campaign expenditures within the meaning of the campaign finance laws; that the Federal Election Commission, if asked, would conclude that these payments did not

constitute a violation of the law, even as a civil matter; and that the facts do not make out a knowing and willful violation of the campaign finance laws warranting criminal prosecution.

We have searched the record of reported cases, agency enforcement actions and advisory opinions, as well as our own experience on the Commission, for relevant authority. We do not believe that there is any prior case that states that the conduct at issue in the Edwards matter, or even conduct substantially similar to it, constituted a violation of the statute. Moreover, in 2007 and 2008, a candidate would not have been on notice that the payments by Mrs. Mellon and Mr. Baron to Ms. Hunter would violate the campaign finance laws. A criminal prosecution of a candidate on these facts would be outside anything we would expect after decades of experience with the campaign finance laws.

We believe that the theory on which the government intends to base its prosecution is without precedent in federal election law, and that the Federal Election Commission would not support a finding that the conduct at issue constituted a civil violation much less warranted a criminal prosecution.

We strongly urge that, if any action is contemplated on such a far-reaching, and (in our view) erroneous reading of the law, the matter should be considered in the first instance by the expert agency charged by Congress with interpreting and applying federal campaign laws – the Federal Election Commission.

Thank you for the opportunity to share our views.

Sincerely yours,



Robert Lenhard



Scott E. Thomas