EXHIBIT B

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 SCOTT E. THOMAS

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

1. I am Scott E. Thomas, a citizen and resident of the District of Columbia 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 Dickstein Shapiro LLP, and I head the Political Law Practice at the firm.

2. I am a graduate of Stanford University where I received my B.A. in 1974 and the Georgetown University Law Center, where I received by J.D. in 1977.

3. I began my legal career as a staff attorney with the Federal Election Commission in 1977. In 1980 I became an FEC Assistant General Counsel for Enforcement, and in 1983 I began service as the Executive Assistant to then-FEC Commissioner Tom Harris.

4. In 1986 I was appointed as a Commissioner on the FEC by President Ronald Reagan. I was reappointed by President George H.W. Bush in 1991, and by President William Clinton in 1997. I served as a Commissioner on the FEC for almost 20 years, from 1986 through early 2006.

5. I served as Chairman of the FEC four times, in 1987, 1993, 1999, and 2005.

6. I serve on the American Bar Association Standing Committee on Election Law as well as the Elections Committee of the ABA's Section on Administrative Law and Regulatory Practice.

7. I have written, taught, and lectured in the field of campaign finance law. I have co-authored articles in that field in the *Stanford Journal of Law and Policy*, the Washington College of Law *Administrative Law Review,* the *Catholic University Law Review*, and the University of Miami Law Review. I have given invited lectures at the Georgetown University Law Center and the George Washington University Graduate

Program of Political Management in the field of campaign finance law. I also have lectured and produced campaign finance law materials for educational programs sponsored by groups such as the Practising Law Institute, the American Conference Institute, the Corporate Counsel Institute, and the Association of Corporate Counsel.

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 that were used for the purpose of supporting Rielle Hunter in 2007 and 2008 were subject to the restrictions imposed by the federal elections laws. As part of my review, I was asked to assume that John Edwards was aware of all the material facts relating to these payments, that John Edwards participated, orchestrated or requested the payments, and that the purpose of the payments was to provide for Rielle Hunter's support and hide his affair. I further assumed that the payments by Mrs. Mellon and Mr. Baron were motivated, in part, by a desire to secure the Democratic Nomination for President of the United States for Senator Edwards. I was informed that the payments by Mrs. Mellon approximated $725,000 and those by Mr. Baron exceeded $100,000 during the course of the campaign. 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 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 agency enforcement actions, advisory opinions, other opinions from the FEC, and my own experience as a Commissioner through 2006.

10. Based upon my knowledge, training and experience, in addition to the research that I conducted, it is my opinion that the facts as I assumed them to be do not make out a violation of the federal election law. Specifically, it is my opinion that these payments by Mrs. Mellon and Mr. Baron are not direct campaign contributions, nor are they third-party expenditures that would be considered campaign contributions. In addition, it is my opinion that these payments also would not be considered contributions subject to federal election law under 11 C.F.R. §113.1(g)(6), which treats the payment of certain "personal use" expenses of a candidate by a third party as contributions.

11. It is further my opinion that a reasonable person, familiar with this area of campaign finance law in 2007 and 2008, and today, would not have believed that these payments were in clear violation of the campaign finance laws. Rather, it is my opinion that a reasonable person with knowledge of this area of campaign finance law in 2007 and 2008, and today, would conclude that these payments did not result in 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 would indicate that the conduct at issue as described in the Indictment violated the federal election laws.

13. I communicated this opinion to counsel for Senator Edwards in January 2011. Subsequently, on April 20, 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. During the course of my interview, I further informed the Government that, had I been counsel to John Edwards during the course of 2007 and 2008, and been asked about the legality of these payments under the federal election law, I would have offered the opinion that these payments did not violate the federal election law.

15. Because the Government agents would not permit the interview to be recorded (as offered by counsel for Senator Edwards), I subsequently prepared 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.**

16. 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 election 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 6th day of September, 2011.

Scott E. Thomas

Sworn to and subscribed before me

this 6 day of September, 2011.

Notary Public

My Commission Expires: PENNY CHANIN NOTARY PUBLIC DISTRICT OF COLUMBIA My Commission Expires March 14, 2016

(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 laxw 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