

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