

## A Sad Spectacle

The 9th U.S. Circuit Court of Appeals just overturned District Judge S. James Otero and reinstated criminal charges against Pierce O'Donnell, one of Los Angeles' brightest and most successful trial attorneys. *United States v. O'Donnell*, 2010 DJDAR 8903. O'Donnell is accused of violating federal campaign finance laws — specifically 2 USC Section 441f, which simply states: "No person shall make a contribution in the name of another person." O'Donnell allegedly contributed \$26,000 in 2003 to John Edwards' presidential campaign — through employees and relatives. The indictment claims that O'Donnell arranged for these "straw donors" to each make \$2000 contributions in his or her own name and that O'Donnell in fact reimbursed or even advanced the funds. Judge Otero dismissed the indictment, holding that the federal statute does not clearly apply to straw donors. In a unanimous opinion, Judge Raymond Fisher, joined by Judges Alfred Goodwin and William Canby, held that the statute does indeed apply to straw donors and is sufficiently clear that O'Donnell was put on notice that his alleged conduct would be a violation.



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O'Donnell attended Georgetown Law School and also received a Master of Law from Yale Law School. He clerked for 9th Circuit Court Judge Shirley Hufstедler and then went on to clerk for U.S. Supreme Court Justice Byron White. He is known for many cases, but some of his famous ones include the well-known Art Buchwald case, where he successfully defeated the Hollywood studios net profits definition, and more recently the Hurricane Katrina case, where he won billions from the U.S. government for the victims of the storm. He has represented both plaintiffs and

defendants in complex matters. He has written several books and many articles, and lectured throughout the country. He is a hard working lawyer and reportedly a devoted father.

In light of this extraordinary career, that O'Donnell should go to jail or lose his law license for a relatively small contribution to a failed political campaign of a now disgraced politician seems both tragic and ridiculous. There is just something that is not right about all this. It raises questions about both O'Donnell and the prosecutors. And no one comes out too well.

The use of straw donors is not new. In fact, it appears to be a common practice. Not that this is any type of excuse — but one can imagine that if the allegations are true, O'Donnell must have thought he was not doing anything unusual — maybe speeding a bit — perhaps 75 mph in a 60 mph zone. O'Donnell arranged a plea with the state prosecutors for a similar kind of violation for contributions to Jim Hahn's successful 2001 mayoral election. So why did this become such a big deal? Did the federal prosecutors here wish to make an example of a very smart, very savvy, very high profile lawyer? Or was O'Donnell just too full of hubris that he angered the U.S. attorneys, who decided to take the government's limitless power and use it to crush a cocky lawyer?

Not to say that the federal election laws are unimportant, they are critical to our money heavy political process. Transparency is crucial and there is a need to prevent those with extraordinary wealth from having special access to our politicians. But these laws are an inconsistent patchwork of poorly crafted legislation, which has been ravaged by the courts. Take for example the \$2000 limit on individual contributions to candidates, how can that make sense when compared with the U.S. Supreme Court's recent ruling declaring that corporations can spend whatever they want? "If the First Amendment has any force," Justice Anthony Kennedy wrote for the majority in *Citizens United v. Federal Election Commission*, "it prohibits Congress from fining or jailing citizens, or associations of



Los Angeles attorney Pierce O'Donnell

citizens, for simply engaging in political speech." Of course that is what O'Donnell is now facing for allegedly contributing \$26,000 through straw men to get around the restrictions on individuals. While that may sound like a substantial sum, it is peanuts in a national presidential campaign.

Since the case is being sent back for trial on the merits, this article makes no comment on whether O'Donnell is guilty or not. But regardless of the outcome or the specific facts, this whole business is sad. Pierce O'Donnell is no Mark Dreier or Mel Weiss or Bill Lerach — each of these men committed substantial financial crimes for their own greed in their capacity as members of the bar and they damaged our legal system and brought down the reputation of lawyers generally. O'Donnell's alleged violation was as a citizen who supported (albeit foolishly in retrospect) someone he thought should lead our country. Perhaps he was so passionate about John Edwards that he wanted to give more than the law allowed.

Henry David Thoreau, in his famous essay on civil disobedience, refused to pay a tax and went to jail. Maybe O'Donnell will too.

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