

## Norfolk DA taps campaign donor as special prosecutor

Wednesday, May 11, 2011 -- Anonymous (not verified)

Local Coverage

Wednesday, May 11, 2011

**Author(s):**

Dave Wedge

The Norfolk district attorney is in the awkward position of having appointed a special prosecutor who is a campaign donor to try a sex-and-drug case against a wealthy developer who is also a campaign donor.

DA Michael Morrissey this week tapped private attorney Andrew DiCarlo Berman as a special prosecutor in the statutory rape and cocaine trafficking case against prominent Quincy developer William S. O'Connell, 71. Morrissey made the move after recusing himself from the sordid case, citing longtime Beacon Hill business dealings with O'Connell.

A Herald review of state campaign finance filings found Berman has donated \$1,900 to Morrissey since 2002, including a \$250 donation in 2009. Berman's late father, Malcolm, was also a longtime Morrissey political supporter who gave the former state senator \$1,300 between 2002 and 2009.

"The fact that someone gave me money, whether he's a special prosecutor, an attorney or someone we're prosecuting, has no effect," Morrissey said. "I've known Andrew for a number of years. I know him to be a fair individual and he's a good lawyer."

Morrissey said he chose Berman because he was one of the prosecutors on a corruption case involving Stoughton police and had worked as an assistant DA under Morrissey's predecessors, former Norfolk DAs William Keating and Bill Delahunt.

Berman said he sees no conflict in his campaign donations, saying, "It has no bearing in my mind at all in the manner in which I intend to handle the case."

Morrissey, a former state senator, said he recused himself from the O'Connell case because as a legislator he had voted on several pieces of legislation connected to major construction projects developed by O'Connell and his brother, Peter, including the Marina Bay condominiums.

"I've had a business relationship with him," Morrissey said. "I want to avoid the appearance of any conflict."

Since 2002, William O'Connell has donated \$1,000 to Morrissey, who was elected DA in November.

Berman was also hired by Morrissey to prosecute Peter O'Connell's son, Robert

O'Connell, for allegedly shooting a Milton firefighter during a December 2009 road rage incident.

Peter O'Connell has donated \$1,100 to Morrissey since 2002.

In one case, Berman and Peter O'Connell both made donations on the same day: On Aug. 7, 2003, Peter O'Connell gave \$100 and Andrew Berman gave \$250. In February 2004, Andrew and Malcolm Berman each gave maximum \$500 donations a week after Peter O'Connell gave \$100, records show.

Asked if the Bermans and the O'Connells ever attended fundraisers together, Morrissey said, "Not that I'm aware of."

"I wouldn't have known them," Berman said of the O'Connells, adding that he "never even heard the names" until he was assigned to prosecute their criminal cases.

Neither Peter O'Connell nor an attorney for William O'Connell returned calls. A spokesman for the brothers, George Regan, declined to comment.

Legal analysts questioned why the DA would hire a special prosecutor who has donated to his campaign.

"The promise was made publicly that the reason for this selection is that you want to avoid the appearance of conflict," defense attorney Wendy Murphy said. "Absolutely, it opens the door to new questions. It's not like everyone who makes a donation is incapable of being impartial. It's the appearance of impropriety -- the public trust -- that Morrissey has to worry about."

The DA shouldn't even have chosen his own replacement because of his personal conflict, said Gerald Uelmen, a legal ethics professor at Santa Clara University in California. Uelmen said most states have an "institutional backup," noting that in California the state attorney general takes over when a local prosecutor has a conflict.

"If you've got a conflict of interest that requires your recusal from the case, then your conflict of interest should pervade the appointment of your substitute," Uelmen said. "Ultimately, it may be that the appointment should be made by the court."

But Morrissey said the appointment should cause no concern to the public.

"Whether you contribute or not," he said, "won't matter in this office."

**Source URL:**

[http://bostonherald.com/news\\_opinion/local\\_coverage/2011/05/norfolk\\_da\\_taps\\_campaign\\_donor\\_special\\_prosecutor](http://bostonherald.com/news_opinion/local_coverage/2011/05/norfolk_da_taps_campaign_donor_special_prosecutor)