



**ATTORNEY GENERAL JOHN VAN DE KAMP:** "We have to look at more thoughtful ways of handling these [public corruption] cases." RUSS CURTIS / THE RECORDER

## State Special Prosecutor Proposal Under Scrutiny

**BY SIGRID BATHEN**  
RECORDER CAPITAL CORRESPONDENT

**SACRAMENTO** — Attorney General John Van de Kamp is examining a proposal to create a state special prosecutor's office to investigate and prosecute public corruption cases while district attorneys are keeping a cautious eye on the plan.

"We have not reached any conclusions," Van de Kamp said in a recent interview. "We're still rolling it around."

The attorney general has met with several local prosecutors to discuss the proposal for a state special prosecutor, and representatives of the attorney general's office have discussed possible enabling legislation with the staff of Senate President Pro Tem David Roberti, D-Hollywood.

"From what I've seen this far, a lot

better job can be done [on public corruption cases]," Van de Kamp said in a news conference last October. "We have to look at more thoughtful ways of handling these cases."

Sacramento District Attorney John Dougherty said his discussions with Van de Kamp's office indicate the attorney general is considering three alternatives — a special prosecutor, a special agency with the option to prosecute or additional resources for local DAs for investigative and prosecution costs in public corruption cases.

Prosecutors interviewed said district attorneys' offices often do not have the resources to conduct wide-ranging political corruption probes. But one prosecutor predicted there would be resistance to the creation of a special prosecutor by DAs concerned about public perception if they

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give up some of their prosecutorial powers.

"It's a very politically sensitive issue [among prosecutors], though not so much with us," Sacramento chief deputy district attorney Kathryn Canlis said. "Local district attorneys don't want to give up [jurisdiction]. They're sensitive to the public view."

She said some DAs are concerned that creation of a state special prosecutor might be publicly perceived as indicating a DA is unable to properly handle public corruption cases.

Dougherty cites other reasons for leaving local prosecutors with the authority to prosecute political corruption cases.

"Normally the jurisdiction to do a case is with the local county DA," he said.

"From a political standpoint, it's best to leave the jurisdiction with the local DA because they are removed from the political alliances and the powers within the Capitol. A special prosecutor would have to be appointed by somebody over there, and would wield formidable power.

"Obviously, not every district attorney is apolitical," Dougherty said. "But we are removed from the Capitol power structure."

At the request of the attorney general's office, Dougherty's office provided a cost analysis of what additional resources his office would need to handle public corruption cases. The Sacramento DA's office concluded it would cost \$286,000 in first-year set-up costs for one attorney and two investigators, then \$271,000 annually thereafter.

"The problem is a legitimate one, obviously," Dougherty said. "The concerns that local prosecutors have in large part are resources. The question of the prosecution of corruption should be addressed. But I think it would be beneficial to look for a solution in terms of a cooperative effort."

Gary Mullen, executive director of the California District Attorneys' Association (CDA), said the special prosecutor proposal deserves consideration, but members of his organization have taken no formal position on it.

"The idea has merit, and it's something that should be seriously considered by the Legislature as well as prosecutors," Mullen said. "The kinds of political corruption that occur on a statewide level are very hard for a local DA to develop [in terms] of expertise on election law. If you're the DA from Fresno County, for example, that's a very fine office, but it's having a very tough time financially, and it's not possible to have an election law expert on staff.

"And quite frankly, it's unfair for the DA of Sacramento, by the mere historic happenstance of having the Capitol in Sacramento, to suddenly have the duty of being the state's political watchdog. It puts him in an extraordinarily sensitive position," Mullen said.

He said Van de Kamp met in San Francisco on Dec. 1 with CDA president Art Danner, district attorney of Santa Cruz County, vice president Tom Sneddon of Santa Barbara County and past president John Meehan of Alameda



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County, to discuss legislative issues generally, including the special prosecutor proposal.

Mullen said the discussions were "informal" and no position has been taken on the special prosecutor proposal by the CDA, which is waiting for actual details of specific legislation before taking a position. However, he said, DAs would be more likely to support a "cooperative" approach.

"They would have 'first bite,' so to speak, and if they chose not to bring an action, they could refer an action to a special prosecutor," he said. "I don't think any of them — and I haven't polled them — would have a problem with that in concept."

Van de Kamp first broached the subject of a special prosecutor publicly in late October during a news conference on another matter. In response to reporters' questions, the attorney general said "a lot better job can be done" in investigating and prosecuting the wrongdoing of public officials.

"There may be some instances in which special prosecutors should be appointed," he said at the news conference. "It is fair to say that I am not considering having special prosecutors taking care of all the potential kinds of criminal activity in terms of investigation and prosecution [involving] public officials."

Canlis said many public corruption cases have been handled by the Sacramento DA's office, more often involving appointed officials in state agencies rather than elected officials. Cases sometimes involve fraud or embezzlement, she said, and are prosecuted appropriately.

Local prosecutors are acutely sensitive to — and angered by — well-publicized suggestions by a defense lawyer that political corruption cases are ignored or poorly handled by local prosecutors.

Dougherty is angered by public comments on the alleged laxity of local prosecutors by former federal prosecutor Donald Heller, a Sacramento criminal defense lawyer specializing in white-collar crime. Heller represents John Shahabian, a legislative aide who has been granted immunity from prosecution in the FBI's Capitol "sting" investigations in return for his cooperation.

Heller has been an outspoken critic of what he sees as rampant, largely unprosecuted political corruption at the Capitol.

"Everyone who has anything to do with the Capitol at all knows how the

system works, and they know it's a corrupt system," Heller has said. "And the DA's office, unless they have their head in the sand, just has not done anything about it."

"My comments in terms of the local DA are in terms of corruption not so much at the local level, because basically government in Sacramento is clean," Heller added. "My comments were not intended personally, though obviously Dougherty and Canlis are taking it personally."

Heller favors broad measures — including establishment of a special prosecutor's office at the state level — to deal with political corruption.

"What is needed is a multi-faceted political reform initiative to create a special prosecutor's office with statewide jurisdiction," Heller said. "It would be far better to have a special prosecutor's office disassociated from the attorney general combined with the FPCC (the state Fair Political Practices Commission, which investigates civil violations of campaign and election laws."

"We need more substantial penalties for violations of the Political Reform Act, a stronger conflict-of-interest statute, a prohibition on elected officials having secondary employment," Heller said. "There should be some limitation on spending, a limit on contributions by any one entity, and a prohibition on staffers being involved in political campaigns."

While not disagreeing that laws need toughening and prosecutorial resources to go after political crime should be increased, Dougherty strongly disagrees that his office has been anything less than aggressive in cases involving Capitol figures.

"We have either filed cases or investigated them," he said. "Cases have either been prosecuted or we found no prosecutable offense. . . . For Don to say that we haven't done [something], I say, give us a number, give us a case, I'd like to see the specifics to back up the allegations."

Dougherty also points out that the federal government has had far more resources for the Capitol sting operation than his office would.

"The 'buy' money that was used — and I'm not even talking about salaries — was over \$84,000," he said. "A three-year investigation [uses] an enormous amount of resources. I don't think there is a local agency that could give up \$84,000 in 'buy' money, plus the cost of surveillance and agents' salaries. I don't

know what the ultimate cost will be, but it will be a large amount."

Besides Heller, the concept of a special prosecutor also is supported by Common Cause, which recently issued a detailed plan for legislative changes in campaign finance and disclosure laws.

"We believe there has to be some department or mechanism that is free of political considerations [to investigate and prosecute political crimes]," said Steve Barrow, legislative director for Common Cause in Sacramento. "I'm not accusing Dougherty or Van de Kamp, although we have brought cases to them [which were not prosecuted]. We think it would be best to have some mechanism such as they have at the federal executive level, where the executive or the attorney general takes it to some kind of judicial body to see if they think a special prosecutor [should pursue the case]."

Fred Woocher, a campaign finance expert who recently left the Center for Law in the Public Interest in Los Angeles to become a special counsel to Van de Kamp, is coordinating review of the special prosecutor's proposal as well as proposed statutory changes to toughen California's campaign finance laws.

Woocher, who was general counsel and communications director for the Proposition 68 campaign finance initiative on the June ballot, said discussions on Van de Kamp's suggestion for creation of a special state prosecutor are very preliminary.

Although no specific proposal exists, Woocher said Van de Kamp "thinks we should look into it. He may or may not come forward with a proposal, and he wants to know what ideas are out there.

"People have very different things in mind," Woocher said. "Common Cause is talking about setting up a special prosecutor. Others are talking about the federal independent counsel law, a procedure to invoke for specified crimes, an automatic process [used] anytime a certain limited number of crimes are invoked.

"There is such a range of ways of doing it," he said. "Under the federal model, once an allegation surfaced, you could say, 'okay, go to the court, here's some preliminary evidence of a violation,' and the court could appoint somebody to decide how to prosecute."

Other questions raised in the discussions, he said, concern the current system of jurisdiction over cases involving political corruption: "Does the current system of concurrent jurisdiction work? Does it make sense that Dougherty's office by virtue of the fact that it's in the state Capitol have jurisdiction? Should we give them more resources? Or should someone else be doing that? Should it be more equitably distributed? It's a very difficult problem because there are so many aspects to it."

Woocher said the attorney general is seriously examining possible statutory changes. "More important than the notion of the special prosecutor, which has a lot of pizzazz to it, is [the need for] substantive changes in the law," Woocher said.