

CAPITOL INSIDER

Van de Kamp's Achilles' Heel

The attorney general's decision not to prosecute the Hillside Strangler may affect the 1990 governor's race

SACRAMENTO—Prosecutorial discretion—the decision to file, not to file, what charges to file and how many—is surely among the thorniest of legal dilemmas. Rarely is it a matter intruding on the election of a California governor.

As the 1990 gubernatorial race begins in earnest, the disquieting specter of a decision made by candidate John Van de Kamp when he was the Los Angeles district attorney in 1981 has once again returned to

haunt the career of the Democratic front-runner.

Van de Kamp moved to dismiss murder charges against Angelo Buono, the notorious Hillside Strangler. The case was ultimately turned over to then-Attorney General George Deukmejian, whose deputies successfully convicted Buono two years later. Now, for the first time in the tortuous path of explaining his 1981 decision, Van de Kamp says he was wrong.

Throughout Van de Kamp's calm but quick rise in California politics, he has carried the Strangler albatross around his political neck. Coupled with his personal opposition to the death penalty, the decision in the Strangler case has bedeviled an otherwise charmed political career. Elected

attorney general in 1982, before the 1983 Strangler verdict, and easily re-elected in 1986, Van de Kamp has periodically confronted the issue but always managed to weather the storm it caused.

Now that the political stakes are higher, Van de Kamp's 1981 decision has taken on greater significance. In a recent, acerbic article in the *Sacramento Bee*, columnist Dan Walters said the Hillside Strangler case is "Van de Kamp's Willie Horton." Horton was the Massachusetts murderer who viciously attacked a couple while he was on work furlough. The Republicans used the Horton case to dog Democratic presidential candidate Michael Dukakis.

In a terse statement in response to the Walters column, the attorney general said, "In hindsight, it is clear that I was wrong. But any suggestion that this error points to an unwillingness to aggressively prosecute criminals—including death penalty cases—is also wrong."

Van de Kamp has refused to respond further to reporters' inquiries—an unusual maneuver for the otherwise accessible attorney general.

"He has said he was wrong, and he doesn't want to discuss it any further," says a Van de Kamp spokesman.

But the issue will surely not be put to rest so easily. Republican political strategists—perhaps even some fellow Democrats in the primary—are sure to use the Strangler decision, along with Van de Kamp's position on the death penalty, to show that he is "soft on crime."

"His admission was a smart thing for him to do politically," says one top Republican strategist who asked not to be identified. "[But] I think it's going to be an issue that won't go away."

Although Van de Kamp's decision in the Strangler case was made after careful consideration, it is not one easily defended in 30-second television spots. It's difficult to explain how prosecutors routinely make hard prosecutorial decisions. Occasionally, a particularly tough case, such as the Hillside Strangler, will find its way to the top of the office.

"The decisions that get to the DA are never 90-10 decisions," says Chief Los An-



"In hindsight, it is clear that I was wrong," gubernatorial hopeful John Van de Kamp said of his 1981 decision to dismiss murder charges against the Hillside Strangler.

geles Deputy District Attorney Greg Thompson. "They're not even 51-49. They're almost always 49.9 versus 50.1. They are decisions that are on the margin, those where you are damned if you do and damned if you don't."

In making his fateful decision, Van de Kamp relied heavily on the advice of his deputy in the case, Roger Kelly, who recommended dismissal of the murder charges against Buono.

Buono had been implicated by his cousin and accomplice, Kenneth Bianchi, in the slaying of 10 young women in 1977 and 1978. Bianchi agreed to testify against Buono in return for a life sentence. As the district attorney's office developed the case against Buono, Bianchi repeatedly changed his testimony, alternately insisting he had no knowledge of the murders, then describing them in graphic detail.

When the district attorney's office moved to drop the charges against Buono, then-Superior Court Judge Ronald George, now a justice on the Second District Court of Appeal in Los Angeles, condemned the decision. George suggested the prosecution be turned over to the attorney general's office. Buono's conviction has since been upheld on appeal—with Attorney General Van de Kamp arguing to uphold it.

"The evidence ultimately presented and admitted was stronger and more compelling than that which was available when the case was within the jurisdiction of the Los Angeles County district attorney's office," Van de Kamp said in a statement issued in 1983, three days after the Buono jury returned its ninth and final murder conviction.

Later, Van de Kamp told reporters the evidence at the time he made his decision was indeed compelling, but his staff did not properly evaluate it.

Of crucial importance was the district attorney's failure to recognize the significance of microscopic fiber evidence linked to Buono. Then-Deputy Attorney General Roger Boren, now a state appellate court justice in Los Angeles, called the evidence the "cornerstone" of the case.

Defense and prosecution alike say the fiber evidence, though more fully developed by the subsequent prosecution, was always available. "The bottom line is that the overall assessment of the case [by Van de Kamp's office] was incorrect," says Los Angeles Municipal Court Judge Michael Nash, the former deputy attorney general who was Boren's associate in the Buono prosecution. "I don't think anybody was

less than honest in their approach here."

Boren agrees. "There was just so much evidence and the problem really was just getting a jury to absorb it," he says.

Roger Kelly, the deputy on the case, recently left the district attorney's office and is now in private practice. "We were focusing at the time in a different area, on Bianchi's credibility," Kelly says. "The fiber evidence grew in importance; it was much more nebulous at the time."

Those close to the case generally shy away from the political implications of Van de Kamp's decision. "Hindsight is a wonderful thing in all fields," says Kelly. "Obviously, [the Strangler case] was not the pinnacle of my career in the DA's office. I made a mistake and I had to live with it."

"It was always my impression that [Van de Kamp] got incomplete information," says Buono defense attorney Katherine Mader—who is now, ironically, a prosecutor in the Los Angeles district attorney's office. "When you're in a position like Van de Kamp and your office is prosecuting dozens of complicated cases, your judgments can only be as accurate as the information presented to you by the people who work for you. You make prosecutorial decisions on a day-to-day basis and generally they are not complicated. But this was the type of case where he needed to have an extensive memo and briefing before he made the decision."

Whether Van de Kamp's pre-emptive strike will be successful in keeping his mistake in the Strangler case from hurting his campaign for governor next year remains to be seen. Van de Kamp has never faced a strong, well-financed opposition for statewide office. "Obviously [the Strangler case] won't go away entirely," says Van de Kamp spokesman Duane Peterson, perhaps too optimistically, "but I think it has been defused as an issue."

At the same time, Van de Kamp's frankness has earned him some admiration in high-level state political and legal circles, and cooler heads may prevail about the decision to exploit the issue during the upcoming gubernatorial race.

"While I think the decision was wrong, and I thought it was wrong at the time," says one top political strategist who asked not to be identified, "I also know that the exercise of prosecutorial discretion is a very delicate thing. That is real, unfettered power. It has to be exercised incredibly prudently."

"He didn't do it because he was out to free murderers."

—SIGRID BATHEN

LEGAL PRESS

California's 'Thin Blue Line'

When Kevin Sherbondy walked out of prison in March, about 14 years earlier than expected, fellow inmate Dannie Martin and the *San Francisco Chronicle* deserved a good deal of the credit.

After Martin wrote about Sherbondy in his regular *Chronicle* column, a group of influential San Franciscans got Sherbondy's mandatory 15-year sentence overturned. As a teen-ager, Sherbondy racked up three convictions for robbery, burglary and intimidating a witness. All three offenses involved "cocaine arguments" among his acquaintances.

By 1986, however, Sherbondy, then 23, had straightened out his life. He was an honor student in college, held two jobs and was working as a volunteer in a sheriff's department drug-awareness program. His girlfriend, wrote Martin, was resentful of his straight lifestyle and told police about an old gun hanging on his bedpost.

Sherbondy had purchased the cowboy-style revolver at a garage sale when he was 16, and it jammed when the police attempted to test-fire it. Nevertheless, a 1986 anti-drug law mandated a 15-year sentence with no possibility of parole for "career criminals" who own firearms.

U.S. Attorney Robert Bonner did not hesitate to seek the tough sentence for Sherbondy.

Members of the Sherbondy Action Committee—made up of well-known San Franciscans, including state Court of Appeal Justice William Newsom—weren't impressed with Bonner's rebuttal. Newsom called the mandatory term "a beautiful example of a rank injustice."

The group hired San Francisco appellate lawyer Dennis Riordan to write an amicus brief to attack the law on constitutional grounds. Last December, a three-judge panel of the Ninth Circuit overturned the sentence, although the court never reached the constitutional challenges. *U.S. v. Sherbondy*, 865 F2d 996.

The author of the story that first brought Sherbondy's case to public attention hasn't been so fortunate. Angered by Martin's contributions to the *Chronicle* about conditions at Lompoc, prison officials had him shipped off to the less comfortable environs of an Arizona prison.

—MARK THOMPSON