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Plan Aims to Protect the Innocent

Attorney's Proposal Would Bring Together Lawyers, Judges, Police

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By Pat Broderick

Daily Journal Staff Writer

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SAN DIEGO - Defense attorney Allen R. Bloom is demanding answers.

Two weeks ago, his client, Cynthia Sommer, was released from jail - and spared from what could have been a life behind bars - after new testing raised a reasonable doubt that she had poisoned her husband.

But Bloom refuses to just walk away. He is proposing the creation of a standing "Committee of Innocence," made up of prosecutors, defense attorneys and investigators, the presiding judge and the police.

"When we have errors of this kind, we can pull these people together to try to figure out what went wrong," said Bloom, who took on Sommer's case in March 2007. "Putting an innocent person in jail is the legal equivalent of a plane crash. What does the FAA do? They look at the black box. At a hospital, they do a post-mortem."

Bloom figures that all of the participants can only benefit from his committee.

"Judges are committed to the system, and they hate it when something like this happens," Bloom said. "It makes the system look tawdry. Defense attorneys hate it, and the prosecutor has said that she is interested in making sure this won't happen again."

Bloom's client, Sommer, a 34-year-old mother of four, was convicted in January 2007 of the arsenic poisoning of her husband, U.S. Marine Sgt. Todd Sommer, for financial gain - a \$250,000 life insurance policy. Weeks before her new trial, set for May 14 and granted on the grounds of ineffective legal counsel by her previous lawyer, Sommer received some stunning news while incarcerated at Las Colinas jail in Santee.

San Diego County District Attorney Bonnie Dumanis announced on April 17 that she was dropping charges against her. The reason: Subsequent testing of Todd Sommer's tissue samples revealed no arsenic, raising reasonable doubts.

In a published statement April 25, Dumanis said that her office "made the right choices for the right reasons at every step in the process," but conceded that "the criminal justice system is not perfect," and adding, "there are checks and balances in the criminal justice system designed to protect both crime victims and criminal defendants along the way."

Noting that "while Sommer came close to spending the rest of her life in prison," Dumanis said, "the system eventually worked."

Bloom is not buying it.

"They had all the evidence, totally exonerating her, and they told me it didn't exist," Bloom said, sitting in his office in downtown San Diego. "This is a terrible injustice - 2½ years later, a young widow, a mother of four, and her life is taken from her, and there was no crime at all."

While Dumanis declined to comment on Bloom's proposal, she pointed out that she meets quarterly, along with her assistant district attorney and chief deputies, to discuss issues "regarding the death penalty, specific cases or anything else they think is important."

She added, "We have an open-door policy in regard to meeting with criminal defense attorneys in significant cases. We will gather our top attorneys in the office for a roundtable discussion of the Sommer case to determine if we could have handled it differently."

Bloom now is in the process of preparing a motion to dismiss "with prejudice" all charges against Sommer - a move that would prevent prosecutors from refiled against her. A hearing has been set for July 18 before Judge John S. Einhorn, with a status conference set for May 16.

Bloom also intends to raise questions about the conduct of the district attorney's office during the case, and plans to subpoena both Dumanis and deputy district attorney Laura Gunn.

"This is the first time in my career that I will call a prosecutor as a witness," Bloom said.

But his Committee of Innocence isn't about acrimony, he said.

"This needs to be done - not for the purpose of a lawsuit or getting somebody fired," he said, "but to expose what went wrong so that we can fix it. I hope that we will be the first county in the nation to



TOM KURTZ / for the Daily Journal

Allen R. Bloom

establish that."

Justin Brooks, a professor at California Western School of Law, and director of the California Innocence Project, considers Bloom's idea exactly what the system needs.

"It's a great idea," said Brooks, whose nationally recognized project has worked to free the wrongfully convicted, including five men who had served a combined 53 years in prison for crimes they didn't commit.

Brooks shares Bloom's frustration, noting that, unlike plane crashes, when exonerated prisoners are freed, "We just move on. It is really discouraging."

Brooks recalls some of his own experiences.

"I get cases where we even know who the real killers are, and they won't reopen the case to find the killer," he said. "That is where society is at a total disservice. Every time one of these cases goes wrong, we still should go back and find out how we went so far down the path and convicted this person."

Bloom first floated his idea at the annual defender dinner, presented April 25 by the Board of Directors of Federal Defenders and Appellate Defenders in downtown San Diego.

"There was a lot of reaction in the room," Brooks recalled. "There are a lot of cynical defense attorneys, who think things won't change. But I think they will be open to it."

Attorney Michael L. Crowley, president of the San Diego Criminal Defense Bar Association, has discussed the idea with Bloom.

"I think it is an interesting idea whose time has come," said Crowley, who intends to present Bloom's plan to his board for consideration.

San Diego would be a prime spot for this type of committee, Brooks said.

"With every other DA in the state, I can't even get a meeting," Brooks said. "I can't even get assistant DAs to look at my cases. In this city, Bonnie Dumanis will actually sit down and look at my cases. I think she wants to do the right thing, and the police, by and large, want to do the right thing. It's just getting people at the table together."

But, Brooks added, "The criminal justice system is always 10 steps behind. It's the adversarial nature of it. But with some consensus, you can get some reform going on. It's as simple as that."

Brooks figures that his project reviews about 2,000 cases a year, litigating 12 to 20 in the Southern California region.

"These are very labor-intensive cases," he said. "It would make our jobs easier if, on the front end of the system, we fixed what led to the wrongful convictions."

San Diego County Sheriff William B. Kolender is open to Bloom's idea.

"Anything that advances the pursuit of truth and justice is a good thing," he said, "but obviously we would have to examine any specific proposal in order to determine its viability and effectiveness."

Whether it flies or not, Crowley commends Bloom's moxie, calling him "a take-no-prisoners defense attorney that I really admire."

"The Sommer case is a perfect example of that," Crowley said. "He is never afraid to buck the system or his colleagues if he thinks they are wrong."

DISCUSSION

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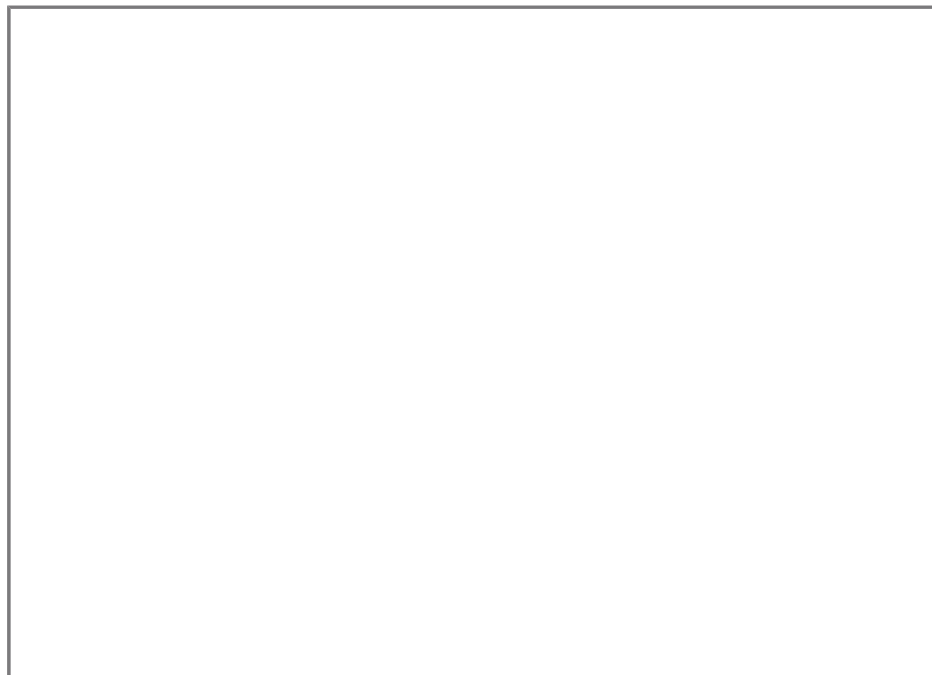
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