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Dumanis defends record amid criticism

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Despite a stretch of imploded prosecutions and courtroom setbacks, District Attorney Bonnie Dumanis isn't hunkering down.

Instead, after almost six years in office, she has her eye on a third term.

"I am running for district attorney in 2010," she said in an interview in her 13th-floor office at the Hall of Justice in downtown San Diego.

The unequivocal statement answers the off-and-on speculation in the legal community that Dumanis could be eyeing a run for higher office, perhaps even a bid for state attorney general.

Dumanis said she has "no interest" in running for attorney general at this time, and said she always intended to run for three terms as the county's top prosecutor.

She also vigorously defended her office in the face of criticism from some defense lawyers that prosecutors overreach by filing inflated charges that don't fit the circumstances of a particular crime, and that they are focused on winning rather than following the office's fundamental tenet of achieving justice.

Those criticisms are noteworthy because in her tenure, Dumanis has had good relations with defense lawyers, who have said she is more accessible and flexible than her predecessors on many issues.

Dumanis takes pride in that and said such outreach was "unprecedented." But Michael Crowley, the head of the San Diego Criminal Defense Bar Association, said the controversy over the recording of phone conversations between inmates and their attorneys could undo some of that good will.

"In the bigger picture, this goes to an attitude that seems to be permeating that office lately," Crowley said. "Any kind of gamesmanship that can be done is being done, rather than seeking justice. It seems to be a recurring problem over there.

Longtime defense lawyer Gerald Blank, a Dumanis supporter, said the recent string of events should not be overblown.



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Bonnie Dumanis, who was elected S.D. County district attorney in 2002 and ran unopposed in 2006, said she has "no interest" in becoming state attorney general.

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"I believe this is a coincidence where a group of these things are falling together and people are wanting to hop on the bandwagon way too fast," Blank said.

"She's not holed up on the 13th floor of the Hall of Justice and getting defensive. She's extremely accessible, extremely open and extremely thoughtful about these things."

Dumanis already appears to be in campaign mode. She prepared a page-long list of accomplishments in her second term for a recent interview, highlighting work on gang injunctions, sexually violent predator cases and identity theft, among others. She also listed programs for literacy, an anti-methamphetamine campaign and a new program assisting state prison inmates as they re-enter local communities.

The 323 prosecutors in Dumanis' office filed 17,539 felony cases last year. The overall conviction rate is about 94 percent, she said. That is about the same conviction rate as her predecessor, Paul Pfingst, who claimed a 98 percent rate.

After defeating Pfingst in a bruising campaign in 2002, Dumanis was unopposed and waltzed to a second term in 2006.

Her tenure has been largely devoid of the internal acrimony from deputy prosecutors or the high-profile prosecutorial gaffes that contributed to the demise of Pfingst after eight years in office and, before him, District Attorney Ed Miller after 24 years.

But events in a handful of cases over the past several months have created a stir in some corners, especially among defense lawyers who wonder privately if a kind of second-term-itis related to overconfidence and inattention is setting in for Dumanis.

Most did not want to have their concerns quoted on the record because they did not want to antagonize prosecutors and jeopardize pending cases.

But one lawyer who has not been shy about criticizing Dumanis is Alan Bloom, the lawyer for Cynthia Sommer, whose case has been the highest-profile blunder of Dumanis' tenure.

Sommer was convicted Jan. 30, 2007, of murdering her husband by arsenic poisoning. She won a new trial on the grounds her previous lawyer was incompetent, and in May the case against her spectacularly imploded.

Dumanis announced that examination of previously untested tissue samples from Todd Sommer's body showed there was no arsenic present. The charges were dropped and Sommer was released after 870 days in custody.

At a news conference, Dumanis said her office moved quickly when it got the new results, as it is supposed to. "Today, justice was done," she said in comments that were roundly criticized, not least of all by Bloom. He said the case showed that the system failed Sommer and that keeping her in jail and convicting her for a crime she did not commit was a prime example of an injustice.

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In a recent interview, Dumanis said her comments were taken out of context. She said she meant that justice required dismissing the charges once evidence casting doubt on the convictions came to light.

But Bloom said he is also upset that prosecutors are fighting his efforts to have a judge dismiss the case against Sommer “with prejudice.” That would essentially mean the charges could not be filed again, he said.

In court papers, Bloom drew parallels between the Sommer case and the prosecutions of Jim Wade and Dale Akiki under Miller and Michael Crowe under Pfingst.

All were high-profile cases that flamed out in acquittals or with charges being dropped when new evidence led to the conviction of someone else. The Sommer case “rivals each of those examples of San Diego justice gone awry,” Bloom wrote in court papers.

In an interview, Bloom drew comparisons between Dumanis' actions and those of previous district attorneys.

“This stuff runs downhill, it starts at the top,” he said in an interview. “This is the kind of stuff that got her predecessors run out of office.”

Dumanis defended how the Sommer case was handled and said it is being subjected to an internal examination. She said the case should simply be dismissed, without a judge designating if it is done with or without prejudice.

The district attorney also has been criticized in other cases, such as the one against Chula Vista Councilman Steve Castaneda, the first trial brought by the Public Integrity Unit that Dumanis established. A jury acquitted Castaneda of six counts of perjury in April. Four other counts the jury deadlocked on were later dismissed.

Castaneda said the prosecution was politically motivated, and his lawyer said the case was so thin it should never have been filed.

Dumanis defended how the case was handled, contending that Castaneda lied to the grand jury and that prosecutors had an obligation to indict him for perjury.

“Public officials and government employees who abuse the public trust will be held accountable by our office when they commit a crime,” Dumanis said.

“The only duty she fulfilled was a political duty in this case,” Castaneda retorted, noting the acquittals by the jury. “I think she really needs to understand what the law is so she might be more successful when she tries to prosecute someone who might have actually broken the law.”

The office suffered another setback in March, when a jury in El Cajon acquitted Joseph Orlosky of murder and attempted murder for shooting three men whom he thought were stealing copper from his Jamul ranch. He still faces charges of manslaughter and attempted voluntary manslaughter.

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That loss may have been particularly galling because Orlosky's lawyer was Pfingst and one of Dumanis' top prosecutors, Deputy District Attorney Jeff Dusek, handled the case.

In recent weeks, Dumanis and the Sheriff's Department came under fire from defense lawyers over the sheriff's system of recording outgoing phone calls from the jails that sometimes captured conversations between inmates and their lawyers. Changes have since been made to the system, but it still faces legal challenges.

Defense lawyers say the recordings between lawyers and inmates are illegal and violate attorney-client privileges. Motions to dismiss cases by defense lawyers who know their calls were recorded have been filed and more could be on the way. Most alarming to defense lawyers is that some prosecutors and investigators apparently have access to the recordings via a link from their desktop computers.

"There is suspicion lots of deputy DAs could be listening," said veteran North County deputy public defender Bill Trainor.

Dumanis has insisted that she knows of no one in her office who has improperly listened to attorney-client calls or used them to their advantage in a case.

She also said the calls are prefaced by an announcement that they are subject to recording, and continuing to talk after that constitutes consent to be recorded. Defense lawyer vigorously dispute that.

Crowley, the head of the criminal defense lawyers group, wants Dumanis to undertake a larger investigation of the recording system.

"I appreciate Bonnie is reaching out to the defense bar, but actions speak louder than words."

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