

**IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR THE COUNTY OF PALM BEACH, FLORIDA**

**FINAL PRESENTMENT  
OF THE  
PALM BEACH COUNTY GRAND JURY**

**INVESTIGATION OF PALM BEACH COUNTY  
GOVERNANCE AND PUBLIC CORRUPTION ISSUES**

**SPRING TERM A.D. 2009**



\*\*\*\*\*

**MICHAEL F. McAULIFFE**  
State Attorney

**PAUL ZACKS**  
Chief Assistant State Attorney

**ALAN JOHNSON**  
Assistant State Attorney

**May 21, 2009**

# INDEX

## INVESTIGATION OF PALM BEACH COUNTY GOVERNANCE AND PUBLIC CORRUPTION ISSUES

	Pages	1-54
<b>I. GRAND JURY SUMMARY</b> .....	1	
<b>II. BACKGROUND AND SCOPE</b> .....	2	
<b>III. DISCUSSION</b> .....	4	
<b>A. BOND UNDERWRITING</b> .....	4	
1. Current Practices and Procedures.....	4	
2. Evaluation.....	5	
3. Findings and Recommendations.....	8	
<b>B. LAND TRANSACTIONS</b> .....	9	
1. Current Practices and Procedures.....	9	
2. Evaluation.....	11	
3. Findings and Recommendations.....	17	
<b>C. COMMISSIONER DISCRETIONARY FUNDS</b> .....	19	
1. Current Practices and Procedures.....	19	
2. Evaluation.....	20	
3. Findings and Recommendations.....	20	
<b>D. ETHICS LAWS</b> .....	21	
1. Current State of the Law.....	21	
2. Evaluation.....	23	
3. Findings and Recommendations.....	28	
<b>E. ANTI-CORRUPTION CRIMINAL LAWS</b> .....	29	
1. Current State of the Law.....	29	
2. Evaluation.....	31	
3. Findings and Recommendations.....	35	

<b>F.</b>	<b>INTERNAL AND EXTERNAL AUDIT MECHANISMS.....</b>	<b>36</b>
<b>1.</b>	Current Practices and Procedures.....	36
<b>2.</b>	Evaluation.....	39
<b>3.</b>	Findings and Recommendations.....	48
<b>IV.</b>	<b>CONCLUSION.....</b>	<b>50</b>
	<b>DISTRIBUTION REQUEST.....</b>	<b>52</b>
	<b>EXHIBIT LIST.....</b>	<b>53</b>
	<b>CERTIFICATION OF PRESENTMENT.....</b>	<b>54</b>

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
SPRING TERM 2009

IN RE: PRESENTMENT OF THE GRAND JURY CONCERNING INVESTIGATION  
OF PALM BEACH COUNTY GOVERNANCE AND PUBLIC CORRUPTION  
ISSUES

CHIEF JUDGE KATHLEEN J. KROLL, PRESIDING

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

**I. GRAND JURY SUMMARY**

The Grand Jury finds that Palm Beach County currently is facing a crisis of trust in public governance. In the past several years, three county and two West Palm Beach city commissioners have pled guilty to federal corruption charges. Indeed, the reputation of Palm Beach County has deteriorated to the point that Palm Beach County is derisively referred to as “Corruption County.” The erosion of public trust in the institutions of governance, whether caused by actual or perceived corruption, has undermined the legal, political and economic pillars which support this community.

While some tentative efforts are being made within the county government to combat the pervasive perception of corruption, the core aspects of effective governance - accountability and transparency - are not being adequately addressed. Solutions to these problems will prove elusive unless and until meaningful independent oversight exists to identify waste, fraud and abuse in county government practices. The Grand Jury finds such meaningful, independent oversight to be a necessary ingredient in good governance and not an option. In addition, the Grand Jury finds that current state laws governing both ethics and criminal misconduct are

inadequate to effectively deter the broad-based misconduct (including non-disclosure of personal interests and conflicts) that has become all too common, not only in Palm Beach County, but throughout the State of Florida.

Based on our findings, the Grand Jury makes numerous specific recommendations to address the most pressing of the issues which have led us to this crisis of confidence in good governance: 1) strengthen state criminal statutes and county ordinances to address conflict of interest, gratuity and theft of honest services by public servants; 2) fully fund an effective independent “watchdog” entity to monitor the activities of the county government; 3) increase transparency, accountability and oversight of county matters involving land transactions; 4) eliminate bond underwriting by rotation and adopt the Government Finance Officers Association (GFOA) recommended practices; and 5) eliminate the current system of commissioner-based discretionary funding of county recreation and infrastructure projects.

## **II. BACKGROUND AND SCOPE**

This Grand Jury investigation was called for by State Attorney Michael McAuliffe to review certain specific areas of Palm Beach County governance and to make appropriate findings and recommendations to improve governance in Palm Beach County. Pursuant to Florida Stat. §905.16, the Grand Jury is uniquely situated as the “guardian of all that is comprehended in the police power of the State.” *Owens v. State*, 59 So. 2d 254 (Fla. 1952). Unlike a Federal Grand Jury, Florida grand juries can, and should, serve a dual purpose in that:

[Florida grand juries]...have a lawful function to investigate possible unlawful actions for all persons, private citizens and public officials alike and to return indictments when warranted, and also have a lawful and proper function to consider actions of public bodies and officials in use of public funds and report or present findings and recommendations as to practices, procedures,

incompetency, inefficiency, mistakes and misconduct involving public officers and public monies.

*Kelly v. Sturgis*, 453 So. 2d 1179 (5<sup>th</sup> DCA 1984).

The objective of this Grand Jury was to review and report on five areas of county governance. The areas chosen represent a cross section of governmental processes and activities within Palm Beach County (PBC Organizational Chart attached as Exhibit 1). The areas of review included specific government functions within the county as well as issues related to anti-corruption efforts. Specifically, the Grand Jury reviewed: 1) Palm Beach County bond underwriting practices; 2) county commissioner's discretionary funds; 3) the county's internal and external auditing system; 4) Palm Beach County governmental land transactions; and 5) existing criminal, ethics and other public integrity laws. The Grand Jury believes these specific areas of inquiry adequately reflect the larger governance landscape in Palm Beach County.

The Grand Jury gathered information regarding each issue area, then evaluated the evidence submitted, reached findings and made recommendations. The Grand Jury heard from numerous witnesses, including government employees, private citizens, business leaders, attorneys and elected officials including constitutional officers. The Grand Jury reviewed thousands of pages of documents ranging from policy and procedure manuals to published articles and state and federal statutes (both current and proposed). Testimony included information about other anti-corruption initiatives adopted in other Florida counties. As a result of this inquiry, the Grand Jury was able to make specific findings and recommendations, both on the county and state level.

The Board of County Commissioners currently is taking steps to change some practices; however, the Grand Jury finds that the Commission must take additional and bolder steps – in

short, the Commission must lead in the effort to restore confidence and faith that elected officials serve the public's interests and not their own.

### **III. DISCUSSION**

#### **A. BOND UNDERWRITING**

##### **1. Current Practices and Procedures**

The Grand Jury reviewed the Palm Beach County's issuance and underwriting of bonds. Bonds are issued by governments to finance large capital projects and spread the cost of these improvements over a number of years. In this way, the county can fund needed projects that benefit current and future taxpayers alike. As of September 30, 2008, the total outstanding debt for Palm Beach County was approximately \$1.89 billion. During fiscal year 2008, Palm Beach County incurred \$445 million in new debt and made debt payments totaling \$200 million or approximately \$320 per taxpayer.

The Grand Jury identified two basic means of selling bonds - competitive bids and negotiated sales. According to the Government Finance Officer's Association (GFOA) recommended practices (attached as Exhibit 2), the most cost effective means of marketing general obligation bonds by a political subdivision with a solid tax base is through the competitive bid process. Bonds that are seen as less secure generally are underwritten by negotiated sale. Documents and testimony revealed that competitive sales on "full faith and credit" backed bonds were standard operating procedure in Palm Beach County prior to 1993. In 1992, the Board of County Commissioners ("BCC") made a decision that all bond underwriting would be by negotiated sale. This decision was against the recommendation of the PBC Office

of Finance, Management and Budget (OFMB) staff. No specific reason was given by the BCC for rejecting the staff's recommendation.

In 1993, requests for proposal (RFP) and qualification (RFQ) were sent out by the BCC. Ultimately, fourteen companies were selected, two by each commissioner. After 1993, all county bond underwriting was done by negotiated sale. The BCC selected a Financial Advisor and General Counsel to monitor and advise the BCC on individual bond sales. That system remained in place until 2003. According to witnesses, a disagreement among the commissioners developed as to the order of selection of bond underwriting companies. After a retreat, the BCC decided to further reduce the pool of bond underwriters to seven (one per commissioner). The BCC then placed the seven remaining underwriting firms into a rotation. Currently, the seven underwriter rotation system remains in use and all bonds continue to be issued by negotiated sale.

The Grand Jury reviewed a proposal to change the system for bond sales. The proposal would favor competitive sales for general obligation bonds and provide for a request for proposal (RFP) on all negotiated underwriting sales. Notably, the proposed "Competitive Selection of Bond Underwriters Policy For Negotiated Sales" (attached as Exhibit 3) adopts the GFOA recommended practice and creates a selection committee (appointed by the County Administrator), to recommend an underwriting team to the BCC based on a competitive request for proposal process.

## **2. Evaluation**

The Grand Jury received and reviewed a significant volume of documents, reports and other materials regarding the county's bond underwriting practices. The Grand Jury also heard the testimony of numerous witnesses condemning the current method of underwriting bonds in



Palm Beach County. In fact, during the pendency of this Grand Jury, the Office of the Clerk and Comptroller (“Office of the Clerk”) issued a *Debt Issuance Process Review* (executive summary attached as Exhibit 4). The Grand Jury finds merit in numerous aspects of the Office of the Clerk’s report. The Grand Jury is astonished that the current bond financing system was allowed to continue for sixteen years. The practice of all bond sales being handled as negotiated sales seems inappropriate given Florida Statute Section 218.385(1) and GFOA recommended practices for AAA rated counties. The view advanced by some that Palm Beach County has an AAA bond rating largely because of the use of negotiated sales is inconsistent with every authoritative source reviewed by this Grand Jury.

The long standing practice within Palm Beach County of bond underwriting rotation also seems antiquated and insular. Each commissioner chooses one bond underwriter who is then placed in a rotation of seven. The underwriters are employed in the order of rotation. The Grand Jury recognizes that initially these bond underwriting companies were selected through a request for proposal (RFP) process. However, the Grand Jury believes no subsequent RFP process has occurred for bond sales since the advent of the seven company rotation in 2003. When a new commissioner joins the BCC, that commissioner can retain the designated underwriter or can select another to replace an existing bond underwriter.

The Office of the Clerk’s *The Debt Issuance Process Review* analyzed 24 negotiated bonds issued between 2003 and 2008. Of the bonds analyzed, the Office of the Clerk’s Report determined that 19 were appropriate for competitive sale. A review of debt issuance practices of 45 other AAA rated counties nationwide (between the years of 2000 and 2008) revealed that Palm Beach County is one of only four counties that did not issue bonds using a competitive sales method. The Office of the Clerk’s Report further concludes that the county’s exclusive use

of negotiated sales has cost the county \$880,000 in excess underwriting fees and between \$440,000 and \$1.3 million in unnecessary annual interest expense.

The Grand Jury finds that *The Debt Issuance Process Review* fails to show sufficient support for its assertion of such specific alleged losses to the county. Notwithstanding, the Grand Jury concludes that based on sound bond issuance principles and GFOA recommended practices, Palm Beach County lost money by limiting itself to the use of negotiated sales. The Grand Jury finds an inexplicable historical reluctance on the part of the county administration to change its bond underwriting procedures. Based on the totality of evidence (both documentary and testimonial), the Grand Jury finds the issue is not whether, but how the bond underwriting system should be changed.

Testimony from numerous witnesses referred to the Policy and Procedure Memorandum (PPM) regarding the *Debt Management Policy and Competitive Selection of Bond Underwriters Policy For Negotiated Sales*. Palm Beach County drafted this PPM for issuance in April 2009 during the pendency of this Grand Jury inquiry. The Grand Jury determined that while the county will adopt a competitive sales preference and an RFP procedure, critical issues remain such as oversight, selection process for bond counsel and disclosure counsel, selection of a financial advisor, and comprehensive documentation and analysis by the financial advisor for each bond issue.

First, the proposed county *Debt Management Policy, Method of Sale* (attached as Exhibit 5), provides that all new money and refunding debt obligations of the county will be sold by competitive bid unless the County Debt Manager and the Financial Advisor shall make a recommendation that the county will be better served by selling such debt obligations through a negotiated sale. This process still lacks transparency and independent oversight.

Accordingly, the Grand Jury finds merit in the establishment of an independent panel for debt oversight. The Grand Jury reviewed the proposal contained in the Office of the Clerk's *Debt Issuance Process Review* regarding the establishment of a Debt Oversight Committee. The proposal would require that members of the DOC be selected through a request for qualifications (RFQ). The Debt Oversight Committee would review, revise and approve a written policy submitted by county staff that governs all debt management practices. In addition, the DOC would review all proposals received and make recommendations for bond underwriting companies, bond counsel, disclosure counsel and financial advisor.

### **3. Findings and Recommendations**

The Grand Jury finds that the current system of bond underwriting needs to be changed to incorporate the Government Finance Officer's Association (GFOA's) recommended practices. The Grand Jury finds that, contrary to the recommendation of staff, the Board of County Commissioners instituted a "negotiated sales only" process and a rotation system that was costly to the taxpayers of this county and undermined confidence in the process. Aside from the unethical conduct and other misconduct reflected in recent corruption cases, the county's bond underwriting process itself lacked transparency and accountability. Therefore, the Grand Jury recommends the following:

- The Grand Jury recommends that the Board of County Commissioners complete and adopt recent county proposals to remove the current bond rotation system and institute a request for proposal (RFP) process for bond sales.
- The Grand Jury recommends that the Board of County Commissioners adopt the recommendation of the Office of the Clerk and others to establish an independent Debt Oversight Committee (DOC) consisting of between five and seven citizens selected through a request for qualifications (RFQ) to review, revise and approve a written policy submitted by county staff to govern all debt management practices. The Grand Jury further recommends that the DOC have minority representation.

- The Grand Jury recommends that the Debt Oversight Committee (DOC) also review all bond underwriting proposals received and make recommendations for bond underwriting companies, bond counsel, disclosure counsel and financial advisor.
- The Grand Jury recommends that Palm Beach County adopt a preference for “competitive sales” of bonds but retain the flexibility to adopt negotiated sales when recommended by the Office of Management and Budget, the Financial Advisor and the Debt Oversight Committee.
- The Grand Jury recommends that Palm Beach County adopt an RFP process for all outside professionals including Financial Advisor, Bond Counsel, Disclosure Counsel and Bond Underwriting Company.
- The Grand Jury recommends that to ensure fairness in the process, Palm Beach County adopt the GFOA best practice to encourage the use of Disadvantaged Business Enterprises (DBE) as part of a policy to include minority firms.
- The Grand Jury recommends that, in order to eliminate perceived conflict of interest, the role of the BCC be limited to acceptance or rejection of bond underwriting recommendations of county staff, financial advisor and Debt Oversight Committee (DOC). This policy should apply to appointments of outside professionals and individual bond underwriting companies alike.

## **B. LAND TRANSACTIONS**

### **1. Current Practices and Procedures**

The Grand Jury received both testimony and documentary evidence regarding the process by which the county obtains, sells and otherwise disposes of real property. The evidence showed that there are three distinct aspects to this process. Through testimony, the Grand Jury reviewed previous large tract purchases by the county. These large land deals are few in number and involve extended business deal points and public policy considerations. Many smaller land transactions regarding the Facilities Management and Engineering projects, most of which are approved by staff and relegated to the BCC consent agenda, receive much less scrutiny at the Board level.

The Palm Beach County Facilities, Development and Operations Department is charged with the centralized planning, design and construction of all county facilities. This planning

includes the purchase of property, sale of existing facilities or surplus properties and exchanges of property. In a normal transaction, such as a library or fire station, county staff decides on an appropriate location for the facility. Existing county land is preferable; however, in most cases, private land purchase or exchange is involved. Regarding private property, once suitability is determined by staff, a price is negotiated and an appraisal is obtained. Approximately half a dozen independent approved outside appraisers exist. Unless time constraints are present, a bidding process among the appraisers is used. The Facilities Department is required to perform due diligence in a cooperative effort involving regulatory, planning and design divisions. There is a public process where input is received from homeowners, the commissioner for the district where the property is located and affected local municipalities.

The Grand Jury also determined that the sale or trade of property normally involves a bidding process; however, in some cases, a swap without a bid process is proposed, typically by the entity attempting to acquire the county property. For example, several years ago the bidding process for the sale of a water treatment facility was avoided and a negotiated trade was used.

The second county department involved in land transactions was (and is) the Department of Engineering & Public Works. These transactions usually involve road projects. This scenario differs from the Facilities Department in that land acquisition normally involves multiple landowners on long strips of land adjacent to rights of way. These properties are generally not considered development pieces as are land acquisitions by the Facilities Department. In addition, the Engineering Department acquires water retention areas adjacent to roadways. Obtaining properties adjacent to rights of way can be by negotiated sale or condemnation.

The Grand Jury received a number of policy documents regarding the manner in which these rights-of-ways are acquired. The documents reflect an evolution spanning two decades and

include guidelines and procedures, memos and documents regarding specific negotiations, condemnation considerations, forms and records. Appraisals are obtained by the Engineering Department for rights of way, retention ponds and related properties. County procedures call for projects to have individually assigned managers and specialists. Ultimately, appraisal oversight and approval is by department supervisors at which time the item would appear on the BCC consent agenda with staff recommendation.

In 2002, the Board of County Commissioners approved ordinance 2002-067, which sets up standards and procedures for the sale, lease and determination of value of real property. This ordinance repealed the previous requirement that four board members approve any transaction when the proposed purchase price exceeds appraised value or the sale price is less than appraised value. This approval function is now delegated to the staff level.

Additionally, the county adopted new procedures for rights of way and easement acquisition by the county in 2002. These policies allow the County Administrator to approve land purchase up to, and including, twenty-five percent above the appraised value of the property.

## **2. Evaluation**

The Grand Jury received substantial testimony from multiple witnesses, both from county government and the private sector raising concerns as to how Palm Beach County handles land sales, acquisitions and trades. The Grand Jury finds a long-standing perception exists that commissioners have been too involved in the building, planning and zoning process. The Grand Jury finds a lack of transparency in large land acquisitions by the county.

For example, several years ago, the county purchased the Mecca Farms property for the possible development of the Scripps research project. The search for an appropriate site for this development lacked transparency, especially in the initial stages.

The county eventually purchased the 2,000 acre Mecca Farms grove site for approximately \$60 million dollars. Palm Beach County paid \$30,000 per acre for land that credible evidence indicated was worth a maximum \$10,000 to \$15,000 per acre. With improvements to the site and area, the county expended approximately \$100 million dollars to acquire and improve the Mecca site. Ultimately, Mecca Farms was never approved for development and the Scripps project was sited and built near Abacoa in Jupiter. Palm Beach County now owns and maintains at taxpayer's expense the 2,000 acres of unimproved and undeveloped property known as the Mecca site.

The Mecca site transaction and other transactions lend credence to the perception of cronyism, unfair access and corruption of the land acquisition process. The Grand Jury repeatedly heard testimony of intense political pressure put on local government in land deals. Witnesses referred to the political atmosphere surrounding land deals as being a feeding frenzy.

The Grand Jury finds that a glaring deficiency in how land deals are handled by Palm Beach County is the overvaluation of property for purchase and undervaluation of property for sale or trade. A number of witnesses testified that when the county buys property, it overpays, and when the county sells property, it sells too cheaply. The Grand Jury examined a number of documents, received testimony and reviewed reports that support this buy high and sell low charge.

Palm Beach County Ordinance 2002-067 exempts exchanges of property from the competitive bidding process. There have been instances involving the trade of county property

whereby the bid process is circumvented and the trade, ultimately ratified by the BCC, is of questionable value to the taxpayer. In addition to a buy high and sell low perception of county land deals, the county appears to give valuable land in exchange for less valuable land.

Given the nature of this type of transaction and the exemption from the competitive bidding process, the process is subject to abuse. In fact, in many instances, developers prefer to obtain county property by trade. The developer benefits because it does not have to go through the bidding process. The Grand Jury heard and credits testimony that, in dealing with Palm Beach County Government, a developer has a significant advantage in trading properties with the county.

The Grand Jury reviewed several specific land deals. One stands out as representative of the situation. In 2006, the county sought to acquire approximately ten (10) acres of land needed for drainage retention as part of the expansion of Northlake Boulevard. As a roadway project, the project was handled by the County Engineering Department. Documents and testimony revealed several troubling aspects regarding the manner of appraisal used by county staff (attached as Exhibit 6). First, the value of the “highest and best use” for the property, as assessed by the Office of the PBC Property Appraiser, was \$414,000. Based on credible evidence, the appraised value of a property should not exceed the assessed value by more than 15-20%. Between June 9, 2005, and May 25, 2006, the county government directed that three separate appraisals be performed for the subject property.

The Grand Jury reviewed the first appraisal which estimated total value for the ten acres at \$467,000. A second appraisal, pursuant to a request by the County Department of Engineering project manager, estimated a new value for the property based upon “hypothetical conditions that were not present during the original date of value.” The second appraisal, dated November 23,



2005, and based on “extraordinary assumptions,” increased the value of the ten acres to twice the assessed value of the property. In yet a third appraisal (requested by Engineering Department) in 2006, the appraised value jumped to \$1,296,000, more than triple the assessed value (attached as Exhibit 7).<sup>1</sup>

According to an Executive Brief Agenda Item Summary for the December 5, 2006 BCC meeting, the county made an appraised value offer of \$1,296,000 but the property owner did not accept it. The owner made a counter-offer of \$1,500,000. The Engineering and Public Works Department reviewed the \$1,500,000 counter-offer and recommended approval (attached as Exhibit 8).

In addition, the BCC voted to change the land use of this property in July, 2006, over the recommendation of staff not to do so. Effectively, the BCC raised the value of the very land it was seeking to purchase. The Florida Department of Community Affairs refused to finalize the proposed change and the land use change approval was subsequently withdrawn by the BCC.

This example highlights the often backward process of finding an appraisal that fits the acceptable selling price of a private land owner. Of course, while such a process benefits the current owner, the taxpayer suffers.

In negotiations to acquire property, the county is at a distinct disadvantage. In many instances, property owners are aware well in advance of the county’s need to obtain their property. This is most common in cases of roadway improvement. The county publishes a five year road program. Pressure exists to complete roadway improvements in an efficient and timely manner. Under these circumstances, a property owner seemingly can demand an extraordinarily

---

<sup>1</sup> Notably, a newspaper article at the time disclosed that the land in question was owned by a company whose partners included an attorney (who was then facing Federal corruption charges) and a former chairman of the Palm Beach County Business Development Board.

high purchase price. The county has the incentive to pay the higher price to complete the improvements.

However, another method exists to achieve the county's objectives. The county only rarely uses condemnation/ eminent domain to acquire these properties. The Grand Jury finds that the county's fear that the condemnation costs more money than paying the higher prices is the driving force behind the summary payment of the high prices. This feeds the need for "made as ordered" appraisals where the use of extraordinary assumptions artificially increases property valuations.

The county should pursue eminent domain/condemnation proceedings more often. In 2008, the county successfully litigated a condemnation case involving a 50 acre parcel of land. The property owner wanted \$160,000 per acre and the State offered \$37,000 per acre. The jury ultimately awarded \$35,000 per acre thus saving more than \$6 million of taxpayer money.

The need exists to reform the county's process for the sale, acquisition and trade of property. The Grand Jury acknowledges the BCC for adopting a conflict of interest certification as part of a new contract with the Business Development Board in 2006. This needed safeguard will help to avoid conflicts of interest, both real and perceived, in the future.

Further, Palm Beach County should contract with an independent appraisal entity. This independent entity would receive and review appraisal work done for the county and report its findings, including any disagreements it may have on an appraisal. The Palm Beach County Property Appraiser's Office, under a contract agreement with the county, could fulfill this role as review appraiser for the county. Clearly, the Property Appraiser's Office already has the infrastructure to assist in an effort to ensure that the taxpayers have an independent entity reviewing significant proposed transactions.

Another alternative involves re-starting a previous practice regarding certain land deals. Approximately 15 years ago, an *ad hoc* right-of-way committee was formed including members from the County Office of Management and Budget, the County Attorney's office, the Engineering Department and Facilities and Management Department to review cases where a decision had to be made whether to pursue condemnation. In these instances, a substantial dispute often existed with the property owner. In fact, the committee was formed in response to commissioner complaints that land purchases were consistently well in excess of appraised value. In addition to the benefit of several departments reviewing a particular negotiation, the committee generally met early in the process. By identifying problem areas early, the process of eminent domain could begin early and mitigate any delays on a particular project. This *ad hoc* committee existed for three or four years and then was discontinued.

The Grand Jury recognizes the benefit of a separate set of eyes regarding property evaluation. No such review process currently exists. The Grand Jury has seen little in terms of an over-arching set of practices which encourage transparency and accountability.

Currently, no effective (i.e. timely) public disclosure of appraisals in land deals exists. The Grand Jury finds merit in the requirement that all appraisals be made public on the county website at least two weeks in advance of the contracts being heard by the BCC. The public then can look at the appraisal and have input on whether or not, for example, it is fair or wise to pay \$30,000 per acre for land that is assessed at \$5,000. A decision to pay a premium for property may have legitimate reasons; however, more transparency will enable the public to have a meaningful dialogue on the issue and increase accountability for these decisions.

In addition, land disposition conflicts of interest currently are not typically disclosed until closing. This results in the Board of County Commissioners voting on a contract without

the timely knowledge that there may be conflicts of interest or relationships between the parties. The lack of transparency and the resulting perception of impropriety could be avoided by full disclosure well before decisions are made.

To increase accountability in instances where the negotiated price of a land purchase is well in excess of the “as is” appraisal amounts, a “super-majority” of commissioners, perhaps five out of seven, should be needed to approve such a purchase. This change would need to be achieved by popular vote through a Charter Amendment.

### **3. Findings and Recommendations**

The Grand Jury finds that the current Palm Beach County land sale, purchase and trade policies and procedures lack transparency and accountability. In many instances, the county has “bought high and sold low.” The Grand Jury finds that, in some instances, the BCC has actually taken action that resulted in driving up the value of property while the county was seeking to purchase the land. The Grand Jury finds that a mindset currently exists to “throw money at the situation” when the county is having difficulty negotiating the purchase price of a property. The Grand Jury finds this approach fosters a perception of, and results in, waste. The Grand Jury also finds that the process of exempting land trades or “swaps” from the RFP process without sufficient vetting and oversight lacks transparency and accountability.

The Grand Jury finds unconvincing the argument within county government that once a landowner is aware of the county’s need for her property that she is somehow entitled to an exorbitant price. The Grand Jury finds that the fear of losing a condemnation proceeding is not a justification for ignoring alternative options including eminent domain. The Grand Jury finds that Palm Beach County needs to develop a better and more transparent process to more efficiently and effectively handle land transactions. The Grand Jury recommends as follows:

- The Grand Jury recommends that Palm Beach County re-institute and formalize a Land Valuation Committee (LVC) to review appraisals, assessments, asking and offering prices and the feasibility of condemnation proceedings for all sales, acquisitions and trades. The LVC should include representatives from the Engineering Department, Facilities and Management Department, Office of Management and Budget and the County Attorney's Office. The Grand Jury recommends that the LVC include a representative from the PBC Property Appraiser's Office or, at a minimum, to notify and consult with the Property Appraiser whenever there is a questionable appraisal or contemplated condemnation.
- The Grand Jury recommends that the county not utilize "extraordinary assumptions" in the county property appraisals process.
- The Grand Jury recommends that any proposed negotiated acquisition that exceeds 25% of assessed value be evaluated by the Land Valuation Committee (LVC) and a detailed report submitted with specific reasons for the acquisition and accompanying reasons why eminent domain (condemnation) is not recommended.
- The Grand Jury recommends that the Board of County Commissioners not consider or approve land use or zoning changes for properties which are subject to negotiation for county purchase unless State law requires such action or upon written advice of the County Attorney.
- The Grand Jury recommends increased transparency in county land sales that involve an offer to trade properties by including a bid process and public review. The value of the sale property and offered trade property should be appraised and all cash bids for the property reviewed by the Land Valuation Committee (LVC). The LVC then compares the cash offers to the trade offer and makes a detailed written finding as to the best value to the taxpayer and makes a recommendation to the Board of County Commissioners.
- The Grand Jury recommends that all land transaction appraisals be published on the Palm Beach County website along with the assessed value of the subject property no less than 2 weeks prior to being scheduled before the Board of County Commissioners for approval.
- The Grand Jury recommends that the Palm Beach County Charter be amended to require a super-majority of County Commissioners (5) to approve any land purchase based upon appraisals using hypothetical assumptions where the purchase price exceeds the assessed value of the property by more than 25%.

## **C. COMMISSIONER DISCRETIONARY FUNDS**

### **1. Current Practices and Procedures**

The Grand Jury received documentation and testimony regarding both the Recreation Assistance Program (RAP), established in 1994, and the District Infrastructure Funding (gas taxes) which was approved in 1999. These accounts are commonly referred to as the commissioners' discretionary funds.

In 1994, the Recreation Assistance Program (RAP) was created when the BCC allocated funds to support various park and recreation projects in the county. The next year, RAP evolved into a discretionary funding program with an annual allocation of \$200,000 per commissioner. According to the documentary evidence and testimony, the recipients of RAP funds must be governmental entities or not-for-profit agencies and the programs/activities must have a recreational or cultural arts component. In 1999, the BCC approved allocating \$7 million in gas taxes to be used by the commissioners for "capital projects." Each commission district was allocated an equal share of \$1 million per year. The annual allocation was approved by the BCC in advance for each subsequent fiscal year until 2009 when the tax was set to expire. In 2006, the BCC voted to allow an individual commissioner to transfer up to \$200,000 from the Infrastructure Discretionary Fund (Gas Tax) to the RAP fund through a series of budgetary transfers. Unspent discretionary funds remain in the account of each commissioner, effectively rolling over to the next fiscal year. The Grand Jury heard testimony that, in 2007, the BCC stopped funding both the Gas Tax and RAP program; however, previously unspent funds remain available within each commissioner's account.

## **2. Evaluation**

Numerous witnesses testified about the negative effect of the discretionary fund programs in both fact and perception. Indeed, these accounts were commonly referred to as “slush” funds. Most of the projects funded by discretionary funds over the years were laudable efforts and beneficial to the citizens of Palm Beach County. This Grand Jury’s criticism focuses not on the projects, but the mechanism used to distribute the funds.

These funds have politicized the process of funding county recreational, arts and infrastructure projects. Unused discretionary funds rolled over to the next fiscal year. Discretionary fund spending is a consent agenda item. Over the years, there has not been a single objection to the passage of discretionary fund items at a BCC meeting. The Grand Jury heard credible testimony that the use of discretionary funds increased in election years. A Tax Watch study recommended elimination of both the Gas Tax and RAP programs for those very reasons.

The Grand Jury recognizes that the issue of discretionary funds has been addressed, in part, by the decision of the BCC to temporarily cease funding these accounts. However, the Grand Jury heard testimony that the discretionary fund programs have not been eliminated. In addition, funds unspent have rolled over year to year and all commissioners have discretionary funds remaining in their accounts. Currently, the total amount of discretionary funds available to commissioners is \$3,412,510 (attached as Exhibit 9).

## **3. Findings and Recommendations**

The Grand Jury finds that by giving each commissioner millions of dollars to distribute essentially as he/she pleased, the BCC created a process that eliminated oversight and, at a minimum, politicized the manner of funding. The Grand Jury also finds that, although currently

no new funding has been allocated to the program, the re-constitution of the discretionary fund program is possible, if not likely. Therefore, the Grand Jury recommends the following:

- The Grand Jury recommends that the use of discretionary funds be formally terminated.
- The Grand Jury recommends that another mechanism be put in place to ensure that any future gas tax revenue or spending programs involving parks and recreation and road beautification be equitably distributed throughout the entire county.
- The Grand Jury recommends that the Board of County Commissioners immediately freeze all remaining funds from all discretionary accounts and that these funds be utilized to fund an independent oversight entity and additional investigative resources.

## **D. ETHICS LAWS**

### **1. Current State of the Law**

The Grand Jury received substantiated evidence regarding ethics rules, statutes, guidelines and proposals. In addition, the Grand Jury heard testimony from a number of civilian witnesses, elected officials, state and local government employees, county staff and staff from other agencies on this important issue.

The Grand Jury also reviewed applicable Florida laws including the State Code of Ethics for Public Officers and Employees, Chapter 112, part III, Florida Statutes. These laws include standards of conduct for public officers, including solicitation, acceptance and disclosure of gifts, unauthorized compensation, misuse of public position, conflicts of interest, nepotism, lobbying prohibitions, and disclosure of financial interests. Notably, unless a violation of Chapter 112 includes acts that also are prohibited in a separate criminal statute, all violations of the ethics chapter are non-criminal. Chapter 112-related complaints and violations are handled by the Florida Commission on Ethics. The Grand Jury identified no Palm Beach County governmental or public entity with the statutory authority to address or adjudicate ethics issues (other than the County Administrator) (see below).



In 2003, the BCC enacted the single local ethics law entitled The Lobbyist Registration Ordinance 2003-018 (attached as Exhibit 10). The Ordinance's stated purpose was: "[T]hat to preserve and maintain the integrity of the government decision making process, it is necessary that the identity and activities of certain persons who engage in efforts to influence County Commissioners, Advisory Board members and employees on matters within their official duties, be publicly and regularly disclosed." This Ordinance includes a "cone of silence" section which prohibits any non-written communication with "any County Commissioner or Commissioner's staff, or any Employee authorized to act on behalf of the Commission to award a particular contract" between the deadline of a request for proposal, bid or other competitive solicitation and the award or other disposition of the contract. The penalties for violation of this Ordinance are non-criminal. Since 2003, there have been two investigations into alleged violations of the lobbyist registration Ordinance.

Also, county commissioners and staff receive at least two ethics publications including "Working in the Sunshine; a Guide to the Government in the Sunshine Amendment and the Code of Ethics." This pamphlet is prepared by the Palm Beach County Attorney's Office and is disseminated as a reference and training tool.

The Grand Jury received extensive testimony regarding Section 286.011 Florida Statutes known as the "Sunshine Law," which provides, in part:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision...at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

A willful violation of this statute is punishable as a 2<sup>nd</sup> degree misdemeanor. The Grand Jury received a significant amount of testimony as to the advantages and disadvantages of the sunshine law which, in essence, restricts any two members of an official board or commission from discussing any matter reasonably likely to come before the board or commission in the future except at an advertised public meeting.

County commissioners also receive the “Florida Commission on Ethics Key Reporting Requirements for County Commissioners.” Commissioners are supposed to receive an introductory training upon taking office. Afterwards, training is by request only. One commissioner did not recall ever having received ethics training upon taking office.

In addition to Palm Beach County and State ethics documents, the Grand Jury reviewed the Miami-Dade County Code 2-1072, which established a Commission on Ethics and Public Trust (attached as Exhibit 11). The Grand Jury also reviewed both the enabling Ordinance as well as the Miami-Dade County Commission on Ethics & Public Trust 2007 Annual Report. In 2007, the Miami-Dade Ethics Commission took part in more than 300 workshops, seminars, training sessions and other community events including whistleblower workshops to discuss and facilitate procedures to discourage ethical violations. Notably, the Miami-Dade Ethics Ordinance has a criminal component: “Every person who is convicted of a violation of this section in State court shall be punished by a fine not to exceed five hundred dollars (\$500) or imprisonment in the county Jail for not more than thirty (30) days, or by both such fine and imprisonment.”

## **2. Evaluation**

In the past several years, Palm Beach County has seen no fewer than five elected officials (three county commissioners) prosecuted for corrupt activities in their official capacities. The

Grand Jury listened to testimony regarding corrupt land deals, bond underwriting arrangements, conflicts of interest, gifts and gratuities and a system that reflected to some a “culture of corruption.” The Grand Jury finds that the status of ethics in governance is a concussion on the body politic which needs attention and follow-up care to heal.

The Grand Jury learned of several efforts to positively advance the ethics agenda in our community. A local organization, Leadership Palm Beach, has created and distributed a Palm Beach County Ethics Pledge (attached as Exhibit 12) which had been signed by a number of public officials. In addition, Leadership Palm Beach currently is drafting a model ethics commission ordinance for submission to the BCC. The Grand Jury encourages these efforts. However, more is needed.

The Grand Jury examined state ethics laws, county ordinances, and the governing documents for the Miami-Dade County Commission on Ethics in order to identify specific areas of improvement. The need exists to send a message to the broader community that the county government is taking constructive, significant action on matters of ethics. The lack of meaningful local ethics laws is compelling evidence that the system itself needs both corrective action and a new direction.

The evidence compels the conclusion that, in Palm Beach County, ethics training and awareness are afterthoughts and not imperatives. County employees receive an initial training but any further ethics instruction is optional. No systematic ongoing policy and procedure in ethics training exists for either commissioners or county staff. The CA’s Office is primarily responsible for ethics training. She has numerous other duties and dedicates only a small fraction of her time to this issue. In most cases, ethical questions are fielded by several different assistant county attorneys on an “as needed” basis. While the evidence shows that the County

Attorney's office is accessible for any questions the commissioners may have, ethics training is sporadic and no ongoing formal procedure is followed.

The Grand Jury reviewed documents and heard testimony regarding the Miami-Dade Commission on Ethics and Public Trust and related Conflict of Interest and Code of Ethics Ordinance. In 1996, the voters of Miami-Dade County approved by referendum the establishment of a Commission on Ethics and Public Trust. The Commission was to be comprised of five members not appointed by County Commission, with the authority to review, interpret, render advisory opinions, enforce the county and municipal code of ethics ordinances, conflict of interest ordinances, lobbyist registration and reporting ordinances, and ethical campaign practices ordinances.

The Miami-Dade ordinance was passed in 1997 to “constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers, autonomous personnel, quasi-judicial personnel, advisory personnel, departmental personnel and employees of municipalities in the county...” The areas covered by the Ordinance include a prohibition on transacting business within the county where there exists a conflict of interest, soliciting or accepting gifts, compulsory disclosure by employees of firms doing business with the county, exploitation of an official position, use of confidential information, prohibition on outside employment, prohibited investments which create a substantial conflict between private and public interests, acquiring a financial interest which would affect official actions, prohibition on lobbying for two years after leaving public service, lobbying prohibitions including “cone of silence” and registration and prohibition on acceptance of travel expenses from county vendors. All citizen members of advisory boards are subject to the ethical requirements of the ordinance.

Importantly, the Miami-Dade ordinance, provides: “Every person who is convicted of a violation of this section in State court shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment in the County Jail for not more than thirty (30) days, or by both such fine and imprisonment.” Thus, the Miami-Dade ordinance carries a criminal sanction for intentional violations.

Miami-Dade County Code section 2-1066 through 2-1076 provides for an enforcement mechanism by establishing the Miami-Dade County Commission on Ethics and Public Trust which is “an independent agency with advice-giving and quasi-judicial powers.” The purpose and intent of this legislation is appropriately summarized in section 2-1067.

The Board of County Commissioners finds that the integrity of both the governmental decision making process and the process whereby candidates are elected is essential to the continued functioning of an open government. In order to ensure the integrity of these processes and restore public confidence in government, the County Commission finds it necessary to create the Ethics Commission. The purpose of the Ethics Commission is to serve as the guardian of the public trust by, among other things, educating the public, candidates for elective office, elected and appointed officials and other public servants as to the required standards of ethical conduct and enforcing those standards of conduct.

The Miami-Dade Ethics Commission is composed of five volunteer members who serve staggered terms of four years each. The Commission’s 2007 Annual Report states that it has 16 employees and a budget of \$2.1 million. The Miami-Dade Ethics Commission operates in the areas of advice-giving, ethics code enforcement, education and community outreach, legislative analysis and review. The Commission maintains an ethics hot-line. In 2007, the Ethics Commission issued 155 opinions and 190 responses to inquiries.

Of particular note is the educational component of the duties and responsibilities of the Miami-Dade County Ethics Commission. Training areas include whistleblower workshops,

municipal ethics training, initial county ethics training and refresher courses and procurement ethics training. The Miami-Dade Ethics Commission joined forces with the Miami-Dade State Attorney's Office and the County's Procurement Management Department to offer a series of workshops to procurement, contracting, and purchasing personnel on legal and ethical issues in public procurement. In total, the Ethics Commission participated in over 300 workshops, seminars, training sessions and other community events in 2007.

One additional consideration exists in assessing the feasibility of an effective Palm Beach County Ethics Commission. As previously noted, the Miami-Dade Ethics Commission was established through a charter amendment. Although the Miami-Dade County Commission had the authority to adopt such an ordinance without voter approval, the charter amendment eliminated the County Commission's ability to dissolve the Ethics Commission or otherwise tamper with its independence. All municipalities and taxing districts in Miami-Dade County are under the jurisdiction of the Ethics Commission.

In November, 2009, a home rule charter amendment was approved by the voters of Palm Beach County requiring that future charter amendments, "when the proposed amendment transfers or limits a municipal service, function, power or authority" and approved by a majority of Palm Beach County voters, take effect in a municipality "only if the amendment is also approved by a majority of voters in that municipality." Thus, a Miami-Dade type ethics commission with jurisdiction in all municipalities would need to be established through a county ordinance with inter-local agreement by the municipalities within the county or by charter amendment with majority voter approval in all municipalities (PBC Ethics Recommendations attached as Exhibit 13).

As noted earlier, ethical violations under section 112 part III, including nepotism, conflict of interest, improper acceptance of gifts, failure to report gifts, misuse of public position, possessing a conflicting employment or contractual relationship, failure to disclose conflicts and any other ethical violation are not subject to prosecution or punishable by incarceration unless they also violate a separate criminal statute. For almost self-evident reasons, this must change.

### **3. Findings and Recommendations**

The Grand Jury finds that a serious disconnect exists throughout the State of Florida regarding ethics and governance. Not only do State ethics statutes not have a criminal punishment component, the Florida Commission on Ethics is viewed as largely ineffective. Palm Beach County has a vested interest in taking charge of this issue and shedding the reputation of “Corruption County.” The Grand Jury believes Palm Beach County should adopt an ethics ordinance similar to the *Miami-Dade Conflict of Interest and Code of Ethics Ordinance* (attached as Exhibit 14). Specifically, the Grand Jury recommends the following:

- The Grand Jury recommends that the Board of County Commissioners expand the lobbyist registration and “cone of silence” ordinance to include other ethics issues including a conflict of interest, nepotism, gifts, and areas not covered under section 112 part III, Florida Statutes. The ordinance should include a revolving door prohibition on lobbying within two years after leaving public service and a prohibition on acceptance of travel expenses from county vendors.
- The Grand Jury recommends that violation of the Palm Beach County Ethics Ordinance be punishable as a 2<sup>nd</sup> degree misdemeanor.
- The Grand Jury recommends the establishment of a Palm Beach County Ethics Commission to hear ethics complaints and issue findings including referral to the Office of the State Attorney to review the appropriateness of pursuing criminal charges.
- The Grand Jury recommends that a confidential ethics hotline be established. This hotline must be administered by an independent entity once established.
- The Grand Jury recommends that the Palm Beach County Attorney’s Office in partnership with the Ethics Commission and the State Attorney’s Office establish a robust

ethics training protocol for commissioners, county staff and volunteer citizen committee members including initial ethics training and mandatory periodic follow-up sessions.

- The Grand Jury recommends that the Palm Beach County Attorney's Office in partnership with the Ethics Commission and the State Attorney's Office require ethics training for county vendors, citizens groups, trade associations, non-profit corporations who receive county funds and any other organization within Palm Beach County upon request.
- The Grand Jury recommends that the Palm Beach County Attorney's Office in partnership with the Ethics Commission and the State Attorney's Office offer "fraud awareness" training to all county employees including a whistleblower workshop.
- The Grand Jury recommends that the Florida Legislature review and clarify the Sunshine Law. The Grand Jury recommends that the Statute more clearly define what constitutes a covered "board or commission" and that a citizen advisory task force with no decision-making power or quasi-judicial duties be exempted from the law's application. This is a preliminary recommendation. This issue warrants and justifies a significant commitment of analysis and review.
- The Grand Jury recommends that the BCC utilize an electronic simultaneous voting procedure to avoid any appearance of influence among the commissioners.

## **E. ANTI-CORRUPTION CRIMINAL LAWS**

### **1. Current State of the Law**

The Grand Jury heard extensive testimony and reviewed a significant number of documents regarding the state and county criminal laws and ordinances available to combat corruption at the local, state and federal levels.

The primary federal anti-corruption statutes are bribery and gratuity (18 U.S.C. §201), extortion (18 U.S.C. §1951), honest services fraud (18 U.S.C §1341 and §1343) and federal program fraud (18 U.S.C. §666) statutes. Federal statutes also criminalize certain conflicts of interest (41 U.S.C. §54). The Grand Jury learned that extortion and honest services fraud violations are punishable by up to twenty (20) years' imprisonment. The Grand Jury also learned that federal income tax fraud charges are available only at the federal level. Lastly, the federal



anti-corruption toolbox includes sentencing guideline enhancements for public servants and elected officials who commit crimes under color of their office.

With regard to the state anti-corruption laws, the Grand Jury learned that many of the statutes utilized to combat corruption in federal court do not exist in Florida state law. The state has a bribery statute (F.S. 838.015); however, there is no crime short of accepting or soliciting a gratuity unless it rises to the level of a “*quid pro quo*” (something for something) bribe. State prosecutors generally cannot obtain federal tax records. State gift and conflict-of-interest statutes are non-criminal. Extortion offenses by officers of the State are misdemeanor offenses. Notably, no state statute exists criminalizing a scheme or artifice to deprive another of the intangible right of honest services or any activity in contravention of his or her commitment to provide loyal service or honest governance for the residents of this state or a local government within the state.

The Grand Jury also reviewed a recent Grand Jury Indictment from the Second Circuit of a state legislator alleging official misconduct. As reflected in the Indictment, in Florida, the crime of official misconduct (maximum punishment 5 years) must involve the falsification of an official document (in that case, a line item in the state budget document). The Grand Jury which returned that Indictment also issued a presentment which addressed the current legislative budgeting process and urged significant reforms (attached as Exhibit 15).

Lastly, the Grand Jury heard expert testimony regarding the significant disparity in investigative resources available to Federal as opposed to State prosecutors to fight corruption. In the current budgetary crisis in Florida, state attorneys are fighting to minimize the budgetary losses. No state attorney has seen budget increases in several years.

## **2. Evaluation**

The Grand Jury easily concludes that the current tools available to state prosecutors in cases of public corruption are fundamentally inadequate. State prosecutors lack both the necessary statutes and the resources to combat public corruption in a manner that the public should expect.

State statutes do not criminalize ethical violations in and of themselves. However, Section 125.69 Florida Statutes states county ordinance violations “shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment.” Thus, some criminal penalties potentially are available through county ordinance enforcement and could serve a deterrent effect by adding criminal consequences to violations of ethical standards. Of course, Palm Beach County needs an ethics ordinance in order to have an enforcement effort.

The Grand Jury reviewed and compared the State and Federal toolbox and found significant disparity regarding both resources and statutes. The Grand Jury finds that, as a practical matter, the recent local city and county commissioner cases could not have been prosecuted under current state anti-corruption laws. Honest services fraud is a concept that has developed in federal practice over the last two decades and it is based on the concept that an elected or appointed public official owes to the citizens a duty to be honest and to act in the benefit of the community. No honest services fraud statute exists in state law.

In addition to the lack of an honest services fraud law, the State does not have access to tax returns, nor can the state prosecute federal tax offenses. When looking at the prosecution of corruption cases, one former prosecutor testified that:

...usually when people commit corrupt acts as a public official they are doing it for money. And so what you try to do is trace where the money went, and almost always when there is corrupt money involved it doesn't show up on a person's tax return. So what you can do is show a flow of money in or out of a bank account by subpoenaing the bank records, and then you lay that against the tax return and you can show the person simply has more money than they reported on their tax return which then also gives you leverage in investigation and negotiation...The State simply doesn't have the resources available to do these kinds of cases, and they don't have access to the same information. I mentioned the tax returns which the Federal government gets and it's very valuable evidence in virtually every case, and the State legally cannot get those.

The Grand Jury heard recommendations from witnesses with public corruption prosecution experience in both the state and federal systems regarding appropriate tools to enhance the ability of state prosecutors to combat criminal violations of the public trust. Two separate areas were discussed: 1) statutory enactments both in substantive law and sentencing guidelines; and 2) an increase in investigative/prosecutive resources.

With regard to statutory enhancements, the Grand Jury finds that an honest services fraud statute in Florida law would enhance the ability of state prosecutors to address corrupt activity that did not rise to the level of an explicit *quid pro quo* agreement. A *quid pro quo* involves a specific "something" in exchange for "something." With a state honest services fraud statute, intentionally fraudulent conduct which deprives the citizens of this county of the right to "good and honest services" would no longer be beyond the reach of state prosecutors.

In addition, under state law, the crime of bribery requires the state to prove "corrupt intent." The statutory definition of "corrupt intent" is "acting knowingly and dishonestly for a wrongful purpose." Both the federal and proposed state honest services fraud statutes require that the proscribed behavior be done "knowingly and willfully" but do not require proof of "corrupt intent." A former prosecutor testified:

The State is required to prove not only that the person acted knowingly and dishonestly, but also that they acted for a wrongful purpose which could be interpreted, in certain situations, and this is common in public corruption cases, where the person says...we were building a senior citizen's home so they had a good purpose, there was nothing bad about my intentions here. And I think that there might be some value in revisiting exactly what the Legislature wants the burden to be for those kinds of cases... I think the existing State bribery and gratuity laws are woefully inadequate to address conduct that I think everyone would agree should not be tolerated.

Further, the Grand Jury finds merit in adopting state sentencing enhancements if a crime is committed by a public servant or under "color of law." Importantly, no current enhancement exists for crimes committed under color of law or "authority."

In Florida, witnesses compelled by subpoena to appear before the grand jury automatically receive use immunity (with the caveat that the witness testifies truthfully). This means the statement cannot be used against the witness in the future even if she admits to criminal conduct. Often this leaves the state prosecutor in a closed box, especially in corruption cases where it often is not known whether a potential witness may have violated the law and engaged in possibly chargeable offenses. The Florida rules should be modified so that grand juries and state attorneys can compel testimony or statements without automatic use immunity being granted.

The Grand Jury received testimony and reviewed documents regarding investigative and prosecutive resources and their effect on efficient and effective public corruption prosecutions. Most corruption cases are highly technical and require months or years of investigative focus and activity. Investigative resources and dedicated prosecutors are the key to developing successful corruption prosecutions as a permanent part of the enforcement landscape.

Again, the approach taken in the investigation and prosecution of public corruption cases in Miami-Dade County is instructive. The Grand Jury heard testimony detailing the resources dedicated to this effort. There are approximately 320 prosecutors in the Miami-Dade Office of the State Attorney serving approximately 2.5 million residents. The Public Corruption Unit has 10 prosecutors. Two of the unit's prosecutors are funded by the Office of Inspector General. In Palm Beach County, the State Attorney's Office has created a public integrity unit. It currently has one prosecutor and one investigator. This is a good start, but more assigned prosecutors are needed and the unit needs to be adequately funded.

In Miami-Dade County, two primary investigative organizations provide the overwhelming majority of corruption cases. First, the Miami-Dade Police Department has a Public Corruption Unit staffed with 30 detectives. Its investigative jurisdiction includes all areas of the county including municipalities. According to prosecutors, this unit has been a "huge help" in effectively combating corrupt practices. Palm Beach County has no dedicated public corruption investigation unit within the Sheriff's Office or any municipal police department.

The second anti-corruption investigative organization in Miami-Dade County is the Office of Inspector General. According to an experienced corruption prosecutor:

I have found them to be extremely effective. The people that they hire are all experienced. They've had backgrounds in some type of white collar investigation or a State agency that maybe looks into...Medicaid fraud...or insurance fraud. Those kinds of agencies where you really develop a different skill set from the usual skills that a police detective picks up. There aren't many public corruption cases that...involve a dead body in the middle of Biscayne Boulevard...we are looking at agencies, we're looking at bank records, we're looking at agency records, we're looking at people's personal financial records and documents. And it takes certain skills to analyze those effectively...it's great to have an agency with specialists...who have experience in that area.

The Miami-Dade OIG investigates both criminal and non-criminal activity involving public servants and civilian contractors in Miami-Dade County. When speaking about the effectiveness of having investigative assistance from the OIG, a Miami-Dade corruption prosecutor stated: “We are not in the governmental reform business as much as sometimes we would like to be. From time to time, we’ve used the Grand Jury...to look at a particular problem or issue, but that is not a substitute for having a full-time agency staffed by professionals that twenty-four hours a day is there to monitor government and to make it accountable.”

With two full-time Assistant State Attorneys funded by the OIG, a close and ongoing relationship exists between the OIG investigators and the State Attorney prosecutors. The Office of Inspector General, Miami-Dade Police Department and Miami-Dade County Ethics Commission act as an effective feeder system into the local anti-corruption effort.

### **3. Findings and Recommendations**

The Grand Jury finds that the keys to effective prosecution of corruption are a robust statutory inventory coupled with adequate investigatory/prosecutive resources. The State of Florida and Palm Beach County are deficient on both fronts. The Grand Jury finds that state corruption statutes are limited in scope and deterrent effect. There is no criminal sanction in state ethics statutes or Palm Beach County ordinances for violation of ethical standards.

Lastly, the Grand Jury finds that Palm Beach County lacks the adequate investigative and prosecutive resources necessary to effectively prosecute corruption. No dedicated anti-corruption investigative unit exists within any of the Palm Beach County local law enforcement agencies. Based on this stark reality, the Grand Jury recommends the following:

- The Grand Jury recommends that the Florida Legislature adopt the proposed anti-corruption statute “Theft or Deprivation of Honest Services” as introduced this spring in the Legislature (attached as Exhibit 16).

- The Grand Jury recommends that the Florida Legislature adopt a sentencing or crime enhancement mechanism for a crime committed by a public servant in his/her official capacity (“under color of law”). This enhancement can take the form of either an increase in the degree and level of the felony or a specific increase in the number of guideline points on the Florida Criminal Punishment Code Sentencing Guideline Score Sheet.
- The Grand Jury recommends that Palm Beach County adopt a comprehensive Ethics Ordinance and that violations of that ordinance be punishable by a \$500 fine and up to 60 days in the Palm Beach County Jail. The Ordinance would be enforced and prosecuted by the State Attorney’s Office.
- The Grand Jury recommends that the State Legislature likewise amend Section 112 part III Florida Statutes to include a criminal sanction for knowing violations of state ethics laws.
- The Grand Jury recommends that the State Legislature and/or the Board of County Commissioners provide funding for State Attorney Office’s investigative/prosecutive resources specifically earmarked for anti-corruption investigations.
- The Grand Jury recommends that the Palm Beach County Sheriff’s Office establish, and the Palm Beach County Board of County Commissioners allocate resources for the establishment of a dedicated anti-corruption investigations unit.
- The Grand Jury recommends that the Florida Legislature enact legislation to remove the automatic grant of “use immunity” pursuant to Fl. Stat. §914.04 when a witness testifies before a Grand Jury or the State Attorney pursuant to a subpoena. The change should not preclude the assertion of any available privilege.

**F. INTERNAL AND EXTERNAL AUDIT MECHANISMS**

**1. Current Practices and Procedures**

In order to gain a fundamental understanding of the current Palm Beach County system of internal and external auditing, the Grand Jury reviewed enabling resolutions, executive briefs, audit reports and policy materials in addition to hearing testimony of county administration leadership, staff, elected officials (including constitutional officers) and civilian witnesses.

The Office of Internal Auditor was established by the BCC in 1987. Authorized by the charter of Palm Beach County “...to serve the Board of County Commissioners...[the internal auditor’s office] independently reviews, evaluates and reports on the accuracy of financial record

keeping, compliance with applicable laws, policies, guidelines and procedures, and efficiency and effectiveness of operations.” While the internal auditor’s office reports directly to the BCC, the enabling Resolution 87-1226 established an audit committee “...to consult with the internal auditor regarding technical issues and to work to assure maximum coordination between the work of the internal auditor’s office and the needs of the Board, the administration, and the Office of the Clerk in his function as County Auditor.” Resolution 87-1226 (emphasis added). In 2005, the BCC repealed the original resolution and subsequent amendments, and replaced them with Resolution R-2005-0372 (attached as Exhibit 17).

The internal auditor position continues to be appointed by the BCC to serve and report directly to the BCC. Specifically, the responsibilities of the internal auditor’s office include the following:

**B. Scope of Audit**

(1) The internal auditor shall have authority to conduct audits of all departments, offices, boards, activities, and agencies under the control of the Board. Such audits may include operational, compliance, performance, management and other audits which are intended to provide reasonable assurance of achievement of objectives in the following areas:

- (a) Effectiveness and efficiency of operations;
- (b) Reliability of financial and other reports; and
- (c) Compliance with applicable laws and regulations.

In addition to the internal auditor’s office, a ten member audit committee was established in the 1987. In 2005, the audit committee was reduced to seven members appointed by the BCC (consisting of one county commissioner, two citizens, the county administrator or designee, the Clerk or designee, the Sheriff or designee and one member selected by the BCC sitting as the governing body of the Palm Beach County Solid Waste Authority). The audit committee



provides general direction to the internal auditor's office by reviewing and approving the annual audit plan, audit reports, and agency and department management letters and recommendations.

The audit committee meets quarterly and reports annually to the BCC. The internal auditor's office submits an annual audit plan to the audit committee at the beginning of each calendar year identifying the departments, offices, boards, activities, and programs scheduled for audit during the year. In fact, in 2008, the internal auditor's office identified all entities scheduled for audit through 2015.

In addition, testimony revealed that the audit committee and the BCC may request special audits; however, such requests are extremely rare. Most audits performed by the internal auditor's office are policy and procedure audits. Only one in four internal audits has any financial element.

In addition to the internal auditor's office, a county external auditor function exists. The BCC engages an external auditor on an annual basis. According to county documents, the contract fee for the external audit was \$600,000 for fiscal year 2006, \$630,000 for fiscal year 2007 and \$660,000 for fiscal year 2008. The external auditor report is a financial and compliance audit in accordance with Section 11.45 of the Florida Statutes. The external audit report expresses an opinion as to the financial statements of the BCC, certain constitutional officers and component units included in the Comprehensive Annual Financial Report (CAFR) (attached as Exhibit 18).

In addition to expressing an opinion on the financial statement (CAFR), the annual external audit report contains management letters which consist of additional audit findings concerning the operation of several constitutional offices. The external audit report is primarily accounting in nature. Neither the internal auditor's office nor the external auditor role functions

as a fraud or forensic auditor. No instances of significant fraud ever have been uncovered in any of their reports.

Lastly, pursuant to its function as auditor of county funds, the Office of the Clerk established an “Audit Services Division” in January 2009. The function of this division is to fulfill the responsibilities of the Office of the Clerk as they relate to auditing functions other than the pre-audit of disbursements of BCC funds. The Audit Services Division is an expansion of the traditional pre-audit or approval function of the Office of the Clerk to include a post-audit review of county transactions.

Recently, the Audit Services Division released a *Debt Issuance Process Review* of the county’s current bond underwriting process. Notably, this report was not a forensic audit. The Finance Division of the Office of the Clerk continues to perform the pre-audit function. The newly established division includes a Chief Audit Executive (CAE) and audit staff. The CAE reports functionally and administratively to the Office of the Clerk.

## **2. Evaluation**

The Grand Jury was presented with a number of differing views as to the need for greater oversight of Palm Beach County government. The examination of both the current system as well as proposed changes to the county’s ability to combat waste, fraud, abuse and mismanagement presents challenges that are magnified by the current financial crisis facing our State. With these realities providing the context for the review, the Grand Jury identified various deficiencies in the current governance system and developed several possible solutions.

One can question the cost of implementing some of the proposals reviewed by the Grand Jury. However, the Grand Jury strongly believes that, while any increased effort to combat

corruption, waste, fraud and abuse will entail a monetary investment, the resulting and long-term benefits (both financial and non-monetary) far outweigh any initial cost.

For example, a renewed belief within the business community that a level playing field exists when engaging in business in Palm Beach County will reap rewards that are not easily quantified, but they are real. However, the Grand Jury also is cognizant that simply adding a new layer of bureaucracy to county government is not the answer.

### **INTERNAL/EXTERNAL AUDITOR ROLES**

First, the current internal auditor's office is not able or designed to provide independent forensic audits. The function of the internal auditor's office is to make sure that all existing policies and procedures are being followed; it is not to uncover fraud and abuse (criminal or otherwise). According to the *Standards for the Professional Practice of Internal Auditing* (IIA Standards) issued by the Institute of Internal Auditors: "The internal auditor should have sufficient knowledge to identify the indicators of fraud but is not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud." In fact, so long as policy and procedure are followed, the Grand Jury finds a strong likelihood that waste, mismanagement and abuse remain hidden under the current auditing system. In addition, the limited nature of the internal audit is further underscored by the fact that all audits are pre-planned at the beginning of each year and all departments are pre-scheduled in a seven year cycle. The pre-planned nature of the Palm Beach County internal audit system is not considered a standard forensic auditing procedure and renders the effort ineffectual in ferreting out fraud.

The Grand Jury finds no specific fault with the work of the internal auditor's office. Simply, the position's scope is limited because a policy and procedure audit is not a forensic audit. A forensic audit looks specifically for fraud and abuse and the auditor tries to account for

every dollar that is being spent. The auditor actually is looking for misspending or diversion of money or property. Not one witness who testified before this Grand Jury could recall a single instance of fraud being uncovered by the county's internal auditor's office.

Also, the internal auditor's office is not independent. The internal auditor's office reports to the BCC through an audit committee. As previously indicated, the audit committee primarily is composed of BCC designees. Even if the internal auditor's office was to be given additional resources with the added mandate to perform forensic auditing, the position would still not be independent of the entity the position is charged with auditing.

Next, the external auditor's function is to primarily review the Comprehensive Annual Financial Report (CAFR) provided by the Office of the Clerk and then to offer an opinion as to the financial statements of Palm Beach County government. While fraud, waste, mismanagement or abuse could be uncovered by through the external auditor function, it would be a chance bi-product rather than a primary function.

The evidence showed that significant fraud was missed for years through the external auditing process. Notably, the entire 2007 external auditor's report of Palm Beach County failed to uncover even one fraudulent or questionable transaction. The lack of effective oversight by the current external auditing process becomes apparent when one considers that this process was used during the three-year period during which the Convention & Visitor's Bureau (CVB) controller misappropriated approximately \$1,556,961. The embezzlement was discovered by the CVB's bank. The State Attorney's Office prosecuted the criminal case.

Another area of significant concern is the continuing lack of adequate oversight regarding non-profit entities funded by county tax dollars. These entities receive substantial public funds, but are not subject to county mandated forensic auditing. As an aside, county funded non-profit

entities such as the Business Development Board (BDB) and the CVB are not subject to the Florida sunshine or ethics laws.

Since 2006, the county has taken some steps in establishing more effective and transparent oversight of the CVB. Subsequent agreements between Palm Beach County and Discover Palm Beach County, Inc. (d/b/a Palm Beach County Convention and Visitors Bureau) address specific areas including conflict of interest, the formation of new oversight audit and finance committees, travel policy, permissible expenses and reimbursement, performance measures, industry certification, and term limits on independent audit firms and legal counsel. While these post-CVB scandal steps should be acknowledged, there is no county-wide policy regarding other non-profit organizations funded, in whole or in part, by Palm Beach County tax dollars. In addition, the county agreements do not contain forensic audit provisions.

In sum, the Grand Jury finds that the current internal auditor's office and external auditor's function do not have any meaningful anti-fraud roles. Further, the Grand Jury finds that the dependence on the BCC renders them ineffective as prospective anti-fraud players in this county.

#### **EXPANDED ROLE FOR OFFICE OF CLERK/COMPTROLLER**

The Grand Jury heard a number of proposals to create or develop a functional watchdog entity for the county. One such proposal involved an expansion of audit services provided by the Office of the Clerk (attached as Exhibit 19). The proposal includes the formal assignment of "inspector general" type responsibilities to the Office of the Clerk through the approval of an amendment to the County Charter by Palm Beach County voters. The components of such a change include the establishment of the Office of the Clerk as the independent auditor for county government.

First, the Grand Jury commends the Office of the Clerk's proactive efforts in establishing an audit services division and the retention of certified fraud auditors. The Grand Jury recognizes the Office of the Clerk's position has institutional and working knowledge of county finances. The Grand Jury also recognizes that the Office of the Clerk's proposal is to expand beyond the office's current record-keeping, auditing and ministerial duties.

The Grand Jury also evaluated the Office of the Clerk's proposal for collaboration of the Office of the Clerk, the Sheriff's Office and the State Attorney's Office in providing an independent watchdog system of audits, investigation and prosecution which, by definition, includes a law enforcement and prosecutorial component. The Grand Jury notes that the proposed "justice partnership" authorizing the Office of the Clerk, as a newly minted independent auditor for the county, to support the prosecutive powers of the State Attorney's Office and investigative duties of the Sheriff's Office applies only to cases of actual or potential criminal misconduct and not to mismanagement, waste, abuse and other non-criminal actions.

First, effective independent oversight involves ferreting out waste, mismanagement and abuse in addition to criminal fraud. For example, in Miami-Dade County, half of the Office of Inspector General investigations involve non-criminal matters.

Further, the Office of the Clerk acts as the Chief Financial Officer (CFO) for the county. An inherent conflict may exist when a CFO also acts an independent watchdog of the entity it serves in a supporting role.

The Grand Jury also has concerns regarding the prospect of the Office of the Clerk, one constitutional office, exerting broad authority over the policy decision-making of an independently elected governance body. The Office of the Clerk's function is to keep the county's books and to hold its funds. The risk in the Office of the Clerk's proposal is that its

forensic audit function morphs into an eighth commissioner role. This risk is heightened because – unlike an independent appointed OIG – the Office of the Clerk has non-audit duties to the BCC and also is elected.

The Grand Jury cannot ignore the clash of roles that arises when elected governmental offices or entities overlap and are structurally in tension. The Grand Jury is aware that a significant level of acrimony exists between the BCC and the Office of the Clerk regarding matters of oversight, public policy and areas of responsibility. Numerous witnesses both within and without government had strong reservations regarding any proposal giving broad independent post-auditing powers to the Office of the Clerk. The Grand Jury finds from the evidence presented that the current relationship between the Office of the Clerk and the BCC is palpably strained. The Grand Jury finds little common ground with which to build the trust necessary to achieve efficient and effective oversight of county government functions. The Office of the Clerk and the Commission do not start from scratch with each other in these matters.

#### **OFFICE OF INSPECTOR GENERAL (O.I.G)**

The Grand Jury heard testimony and received documentary evidence regarding the Miami-Dade County Office of Inspector General (OIG). The OIG model was examined because it was the direct result of Miami-Dade County's ongoing corruption battles in the 1990s. The Grand Jury sought to benefit from the approach and experience of another large South Florida County.

The Miami-Dade OIG was established by ordinance in 1998 (attached as Exhibit 20). The initial budget was approximately \$200,000 and the Inspector General shared office space, a secretary and legal counsel with the Miami-Dade Commission on Ethics. Within the first year of

operation the OIG uncovered several multi-million dollar scandals which resulted in substantial restitution to the county. The Miami-Dade Commission subsequently increased the OIG staff to 15 employees.

The Inspector General initially was chosen by the Commission on Ethics, but the process was modified. Currently, a panel consisting of the State Attorney, the Public Defender, Director of the Florida Department of Law Enforcement (FDLE), the President of the Miami-Dade County Chiefs of Police and one member of the Commission on Ethics selects and provides oversight to the Inspector General. The only aspect of the OIG that is connected to County Government is budget approval. The OIG has a staff of 38, including agents, auditing staff, attorneys, criminal analysts and clerical support. The OIG's current budget is approximately \$5.5 million.

Notably, in fiscal year 2006-2007 actual OIG expenditures were below budget and most of the OIG funding came from sources other than general county funds. These funding sources include a proprietary fee of one quarter of one percent (.25%) on all county contracts and agreements with revenue producing entities to pay for investigative work done at their departments. Miami-Dade county departments which receive revenue, such as the airport, the transit department, the water and sewer department, the solid waste department, all independently contract with the OIG to pay for investigative work done at their departments. OIG personnel are housed at those departments and handle inquiries/investigations on site (sample memorandum of understanding attached as Exhibit 21).

In fiscal year 2007-08, the OIG drew only approximately \$363,000 from general county funds (approximately seven percent of its budget). Agreements with revenue producing departments covered approximately twenty three percent or \$1.3 million while proprietary fees



and restitution generated approximately \$2.2 million dollars. In addition, the OIG had a carry over from the previous fiscal year of \$1.7 million (OIG report attached as Exhibit 22).

The Miami-Dade OIG administers a hotline and callers can remain anonymous. According to documents provided by the OIG, during fiscal year 2006-2007 a total of 586 complaints were received through the hotline (2,095 complaints have been handled during the past five years). Approximately eight percent of the complaints received resulted in the OIG initiating an inquiry, investigation or review; 10% were related to a matter already under OIG investigation or review; 43% were referred to another agency for appropriate action; 26% did not warrant any further action; 8% were from and handled by its dedicated housing hotline and 5% are still under review for further determination.

The Miami-Dade OIG has the power to demand reports, documents and information from any county official or other entity over which the county has jurisdiction. In addition, county contracts require any entity doing business with the county to cooperate with the OIG.

According to documents provided by the OIG: “During its first decade of operations, the OIG identified over \$106 million dollars in questionable costs, losses and damages and lost revenues through IOG investigations, audits and reviews. Since 1998, over \$60 million in future savings and restitution has been achieved for the county.”

The Grand Jury heard testimony from a 22 year veteran corruption prosecutor from the Miami-Dade County Office of the State Attorney. The prosecutor stated:

To expect criminal investigation and prosecution to solve that entire problem is not realistic. We can pick out...corrupt officials from time to time and bring them to justice, but that doesn't deal with the management issue, the flaws in the structure of the agency, the unaccountability of the agency that might have created the climate for this corrupt activity to occur. So you really need a capacity to burrow into a corrupt agency and do more than just cherry-pick corrupt officials. You need to find out...what is the

basis for the problem. And when you have an Inspector General with those kinds of investigative resources who are trained to look at government and to criticize government and to find the flaws and propose the solutions, it's almost like having a Grand Jury that is always in session just looking at government corruption.

In assessing the viability of an OIG in Palm Beach County, the Grand Jury fully recognizes the challenges inherent in establishing an additional component of government as part of the solution to government's potential waste, fraud and abuse. The Grand Jury observed reluctance, if not outright hostility, to funding such an entity. While a broad consensus is emerging that an independent watchdog is needed in county governance, no such consensus exists yet on the means to achieve it. Of course, the funding issue may not need consensus, it simply may need leadership.

While the Grand Jury needed to hear from witnesses with divergent views and place appropriate weight on competing views and approaches, in the end, the goal was to objectively evaluate the current structure and identify specific steps needed to be taken to improve it. The proposed solutions all involve some cost, however, funding need not be onerous. For example, for the amount of funds in one commissioner's single year discretionary allocation, Palm Beach County could create and fund an Office of Inspector General or other independent audit entity.

The Grand Jury also heard testimony that the collaboration of the OIG and State Attorney's Office in Miami-Dade County has saved millions of dollars by ferreting out corruption, fraud and waste. The Miami-Dade County Inspector General described the advantages this way:

The traditional corruption is the type of stuff that you love to read about in the newspaper. You know, this Commissioner gets arrested for taking a bribe, or that Sheriff's Deputy stole drugs and is selling it on the street...and the newspapers love to read about this stuff...but I submit that that is probably about ten percent of the corruption we see in government. The real corruption is non-

traditional, and it's the corruption of waste, fraud, mismanagement and abuse. And as I recall the Certified Fraud Examiners Institution, and other institutes, have basically said that essentially out of every dollar that government takes in as revenue, ten percent of it is lost because of waste, mismanagement and abuse...Most of the resources that we see employed to combat corruption go to the traditional side...Very little bit is left with the non-traditional. And as a result, we have these huge problems of waste, mismanagement and millions and millions and millions of dollars of taxpayer money was squandered. That is why an Inspector General's Office is so critically important...

### **3. Findings and Recommendations**

The Grand Jury finds that a fundamental need exists for an entity within the Palm Beach County governmental structure with meaningful independence from the governing body to be an effective "watchdog" for the citizens of Palm Beach County. The need for effective oversight of county governance is real and change is necessary.

Using existing bureaucracies within the current county governmental structure without meaningful independence is an inadequate approach. Specifically, the Grand Jury finds that enhancing the powers of the current Palm Beach County internal auditor will not be effective. In addition, the Grand Jury finds that the current external auditor position is by its very nature unsuitable to conducting forensic investigations. The Grand Jury finds that any meaningful improvement to the current audit roles will require additional resources, structural changes and adequate forensic expertise.

The Grand Jury also finds that the proposal for the Office of the Clerk to absorb the function into her existing duties is unlikely to be accepted by the BCC and may interfere with the existing roles of the respective office and entity. The Grand Jury acknowledges that personality conflicts or tension should not dictate or preclude appropriate and needed structural changes. However, the palpable acrimony that exists between the two governmental offices was not

missed by this Grand Jury. Second, the Office of Clerk proposal provides for fraud investigations to be turned over to the Sheriff's Office or State Attorney's Office but provides no template or resources for effective investigation and follow-up of non-criminal matters. The Grand Jury finds that an effective "watchdog" entity will need the institutional knowledge, resources and mandate to investigate waste, mismanagement and abuse as well as criminal fraud. Third, such an independent entity must not audit for policy reasons. The Grand Jury finds that previous Office of the Clerk audits of the Convention and Visitor Bureau in 2006 (attached as Exhibit 23) and *The Debt Process Review* in 2009 were primarily policy audits and not for investigative or forensic audit purposes.

The Grand Jury finds that the Miami-Dade County model of the Office of Inspector General (OIG) is the most effective means of achieving a truly independent and robust "watchdog" agency in Palm Beach County governance. The Grand Jury finds that far from being a "layer of bureaucracy" costing taxpayer dollars in a shrinking economy, an independent entity (whether an Office of Inspector General, a Performance and Chief Compliance Officer or an Independent Forensic Auditor) is a necessary component of an effective, responsive government. The Grand Jury also finds that the benefit to the taxpayer would not only be found in the exposure of fraud, waste, mismanagement and abuse, but also in the value of deterrence and the enhanced reputation of this county in the business community. The Grand Jury further finds that, with careful initial planning, only a fraction of the OIG budget will need to be funded through the county's general fund.

The Grand Jury recognizes that political will is the key component to a successful Inspector General's Office. The Grand Jury believes that the BCC must assertively and openly pursue this independent oversight. Thus, the Grand Jury recommends the following:

- The Grand Jury recommends that the Board of County Commissioners draft and pass an Ordinance establishing an independent Office of Inspector General or Performance and Chief Compliance Officer with the ability to obtain any and all records from Palm Beach County governmental entities, vendors doing business with the county and entities funded in whole, or in part, by county tax dollars.
- The Grand Jury recommends that the Board of County Commissioners establish an independent oversight board consisting of the State Attorney's Office, Public Defender's Office, Sheriff's Office, President of the Police Chief's Association, the Chairman of a newly established Ethics Commission and a private resident of Palm Beach County to nominate and oversee the Inspector General/Performance & Chief Compliance Officer.
- The Grand Jury recommends the functions of the Inspector General/Performance/Chief Compliance Officer be modeled after the Miami-Dade County Ordinance establishing an Office of Inspector General.
- The Grand Jury recommends that to offset any direct taxpayer funding for this office the Board of County Commissioners require an agreement with county revenue producing departments to reimburse investigative costs and on site resources provided to those departments. In addition the Grand Jury recommends that all vendor contracts include a built-in proprietary fee of ¼ of 1% to help fund this new entity.
- The Grand Jury further recommends as previously indicated that the BCC fund an OIG or other similar independent "watchdog" entity through discretionary fund account dollars and pursue funding sources in subsequent years to reduce the use of county tax dollars.
- The Grand Jury recommends that the Palm Beach County Board of County Commissioners take immediate steps to establish and publicize a Palm Beach County Government hotline to report waste, fraud, mismanagement and abuse. This hotline must be administered by an independent entity once established.

#### **IV. CONCLUSION**

The Grand Jury acknowledges both the Palm Beach County governmental staff and the individual county commissioners for their cooperation in providing documentary evidence, and when requested, testimony regarding the five areas of governance reviewed by this Grand Jury. The Grand Jury acknowledges the numerous elected officials and other witnesses, who likewise voluntarily testified during the past four months. The Grand Jury recognizes that the areas reviewed have been, and continue to be, of great concern to the residents of Palm Beach County.

The Grand Jury concludes that Palm Beach County must consider, select and implement specific reforms to restore confidence in local governance. In this inquiry, the goal was not to develop a criminal case against any individual or entity. The objective was to identify and develop specific recommendations to achieve structural change in county government so that the community can have renewed confidence that the government works for them.

## **DISTRIBUTION REQUEST**

The Grand Jury requests that this Presentment be furnished to the following:

Hon. Charlie Crist, Governor  
Hon. Alex Sink, Chief Financial Officer  
Hon. Bill McCollum, Attorney General  
Hon. Jeff Atwater, Senate President  
Hon. Larry Cretul, House Speaker  
Hon. Dave Aronberg, State Senator  
Hon. Larcenia Bullard, State Senator  
Hon. Ted Deutch, State Senator  
Hon. Ken Pruitt, State Senator  
Hon. Christopher Smith, State Senator  
Hon. Adam Hasner, House Majority Leader  
Hon. Joseph Abruzzo, State Representative  
Hon. Ellyn Bogdanoff, State Representative  
Hon. Mary Brandenburg, State Representative  
Hon. Carl Domino, State Representative  
Hon. Mark Pafford, State Representative  
Hon. Kevin Rader, State Representative  
Hon. Maria Sachs, State Representative  
Hon. Kelly Skidmore, State Representative  
Hon. William Snyder, State Representative  
Hon. Priscilla Taylor, State Representative  
Hon. Sharon Bock, Clerk & Comptroller  
Hon. Gary R. Nikolits, Palm Beach County Property Appraiser  
Hon. Ric Bradshaw, Palm Beach County Sheriff  
Hon. Jeff Koons, County Commissioner Chair  
Hon. Burt Aaronson, County Commissioner Vice Chair  
Hon. Steven L. Abrams, County Commissioner  
Hon. Karen Marcus, County Commissioner  
Hon. Jess R. Santamaria, County Commissioner  
Hon. Shelley Vana, County Commissioner  
Robert Weisman, County Administrator  
Palm Beach County Criminal Justice Commission

## **EXHIBIT LIST**

### **General Items**

- 1- PBC Organizational Chart

### **Bond Underwriting**

- 2- GFOA Recommended Practices
  - a. Selecting Underwriters for Negotiated Bond Sales
  - b. Selecting Bond Counsel
  - c. Selecting and Managing the Method of Sale of State and Local Government Bonds
  - d. Pricing Bonds in a Negotiated Sale
- 3- PBC Competitive Selection of Bond Underwriters Policy for Negotiated Sales (Draft)
- 4- PBC Debt Issuance Process Review (Executive Summary)
- 5- PBC Debt Management Policy (Draft)

### **Land Transactions**

- 6- Dec 15, 2005 Interoffice Communication from Palm Beach County Property Appraiser
- 7- 3 Appraisals 06/09/2005, 11/23/2005, 05/25/2006 (Northlake Blvd Right-of-Way Acquisition)
- 8- Agenda Item Summary 12/05/2005 (Northlake Blvd Right-of-Way Acquisition)

### **Discretionary Funds**

- 9- 2009 Remaining Discretionary Funds by District

### **Ethics**

- 10- PBC Lobbyist Registration Ordinance
- 11- Miami-Dade Ordinance Establishing Commission on Ethics and Public Trust
- 12- Ethics Pledge
- 13- PBC Ethics Recommendations
- 14- Miami-Dade County Conflict of Interest and Code of Ethics Ordinance

### **State and Federal Corruption Statutes**

- 15- Leon County/Sansom Indictment and Presentment
- 16- Proposed Florida Statute 838.23 Theft or Deprivation of Honest Services

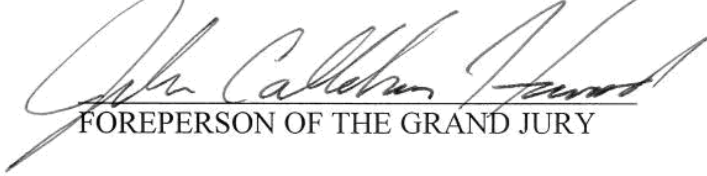
### **Palm Beach County Independent Oversight**

- 17- 2005 Internal Auditor Resolution
- 18- PBC 2007 External Audit Report
- 19- Clerk & Comptroller Proposal
- 20- Miami-Dade County Ordinance Establishing the Office of Inspector General
- 21- OIG Memorandum of Understanding
- 22- 2007 Miami-Dade County Inspector General Report
- 23- PBC Convention and Visitors Bureau Audit (Executive Summary)




**CERTIFICATION OF PRESENTMENT**

The Grand Jury respectfully submits this Presentment this the 21<sup>st</sup> day of May, 2009.

  
FOREPERSON OF THE GRAND JURY

As authorized and required by law, we have advised the Grand Jury returning this presentment.

  
MICHAEL F. McAULIFFE  
STATE ATTORNEY  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

  
PAUL ZACKS  
CHIEF ASSISTANT STATE ATTORNEY

  
ALAN JOHNSON  
ASSISTANT STATE ATTORNEY