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Special Report: White-Collar Crime Behind the secrecy

Commentary by **Melanie Ann Hines**

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fter a four-year hiatus, the statewide grand jury has been revived. It is sitting in Palm Beach County for the current term, which started last August.

The jury's history, rules and final work product are public record, but its actions — from impanelment through deliberation — are secret.

How can you effectively prepare for engagement with this process?
Consider this.

1. Jurisdiction: The statewide grand jury was created to target “organized criminal activity” occurring or having “significance” in multiple counties and circuits. Its jurisdiction is limited to the crimes generally associated with drug trafficking, money laundering, mob and gang activity, large-scale fraud schemes and, more recently, the computer crimes of identity theft and child exploitation. The grand jury has addressed a variety of white-collar crimes, including health care and insurance fraud, illegal money transmitter activity, workers' compensation premium fraud and fraud against the government. The grand jury has authority to label a business entity or multiple individuals as racketeering enterprises, which enhances punishment possibilities.

2. Initiation: When the governor deems it in the public interest, he petitions the Florida Supreme Court to establish the investigating and charging body. In its order, the court designates a presiding circuit judge. The statewide prosecutor serves as the grand jury's legal adviser and may designate one or more assistants or local prosecutors to present cases.

3. Impanelment: The 18 jurors are drawn from across the state based on the driver license database. In certain circumstances, the panel can be regional in scope. The standard rules for juror qualifications apply. Challenges must be contemporaneously made by a person who is aware of their own target status or may be raised later by an indicted person with no basis for that prior knowledge. The jury meets for a maximum of 18 months.

4. Grand jury secrecy: The grand jury system has always functioned in secret so witnesses and grand jurors can act free of outside influence and without fear of retribution. Secrecy also prevents the escape of suspects and destruction of evidence, and protects the innocent and uncharged suspects. Even under Florida's broad public records laws, the Legislature and courts consider grand jury secrecy essential to its proper function. Public records, however, do not become unavailable simply by presentation to a grand jury. But juror names and addresses, witness and exhibit lists, jury notes and any documents related to the deliberations are not public record, and the courts are extremely reluctant to order their disclosure. It is a felony to disclose any aspect of the proceedings or the identity of those under investigation without court authority. Free speech rights permit witnesses to reveal their own testimony, but not until the term of the grand jury is over and the investigation is complete.

5. Right to counsel: Witnesses may consult with lawyers outside the grand jury room at any time. As with federal grand juries, a lawyer's presence with a witness in the statewide grand jury room is not authorized. Clearly, it is permissible for a witness to reveal the questions of the legal adviser or grand jurors to defense counsel.

6. Witness immunity: Grand jury subpoenas convey use immunity, which protects witnesses from self-incrimination but does not prevent prosecution based on other evidence or for perjury. Subpoenaed witnesses who refuse to testify face incarceration until the grand jury's term expires. Requests for voluntary appearance or "invitation letters" afford witnesses no immunity at all — just the opportunity to explain themselves. While not entirely comforting, there are valid reasons to appear voluntarily as in the case of public officials. There is no penalty for refusing an invitation.

7. Witness testimony: Florida law requires all grand jury witness testimony to be recorded. Transcripts may be released by court order but only to determine if the testimony is consistent with that later given by the witness in court, to evaluate perjury charges or to further the interests of justice. An accused is entitled to a copy of his grand jury testimony through discovery.

8. No true bills and indictments: Indictments — findings of probable cause — are issued by a vote of 12 grand jurors. If 12 members do not agree to indict, the jury issues a no true bill, which is not equivalent to an acquittal and is not published without court authorization. If indictments are issued, the presiding

judge determines if bond is appropriate and sets conditions on the arrest warrants. The indictments remain sealed until all defendants are arrested. The cases are transferred for trial in the circuit where venue is appropriate at the option of the state.

9. **Reports:** The grand jury can issue reports on the administration of the public trust. In this process, opportunities exist for public officials, civic groups, industry representatives and professional associations to assist in the jury's evaluation of the issues. Reports can be challenged as lacking a proper factual or jurisdictional basis but only by individuals criticized in a report by name or implication. They may seek to have the report repressed or portions expunged, and it is not released until the issues are litigated and appealed. An indicted defendant does not have the right to challenge an accompanying report.

10. **Bottom line:** The statewide grand jury is a unique and powerful part of the criminal justice system. It should be noted that the Legislature has on numerous occasions enacted grand jury recommendations on crime prevention and control. The current statewide prosecutor, William Shepherd, promises the grand jury will be a "prominent feature" of his administration. You may further prepare by reviewing copies of grand jury reports and other information about their work on myfloridalegal.com, a Web site maintained by the attorney general's office.

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