

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR DUVAL COUNTY.
FALL TERM, TWO THOUSAND AND SEVEN**

**FINAL REPORT
OF THE
DUVAL COUNTY GRAND JURY**

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FILED

January 17, 2008

Circuit Judge Presiding
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**OPEN GOVERNMENT:
RESTORING ACCOUNTABILITY AND PUBLIC CONFIDENCE IN
JACKSONVILLE'S LOCAL GOVERNMENT**

EXECUTIVE SUMMARY

The importance of honest and open local government in promoting the public welfare has been well understood since the founding of our nation, yet Jacksonville's residents have rarely felt as disengaged and disenchanting with their local government officials as they do today. The following presentment enumerates the findings and conclusions of the Grand Jury with regard to its investigation into whether: 1) Jacksonville's City Council members failed to comply with Florida's Sunshine Laws; and 2) the City of Jacksonville failed to ensure transparency and fairness in local procurement practices.

As to the allegations that certain of Jacksonville's City Council members failed to comply with Florida's Sunshine Laws, the Grand Jury does not find probable cause to believe that a criminal Sunshine Law violation has been committed by a former or current member of the Jacksonville City Council. In order to establish probable cause to believe that a criminal violation of the Sunshine Law occurred, the Grand Jury needed to receive evidence indicating that Council members were intentionally holding a secret meeting to discuss upcoming public business when they knew the meeting would violate the requirements of the Sunshine law. This evidence was simply not received during the Grand Jury's investigation.

While the Grand Jury found no probable cause to establish that a Council member had committed a criminal Sunshine Law violation, there is certainly evidence of technical or non-criminal Sunshine Law violations. The Grand Jury gave serious consideration to causing technical or non-criminal infractions to be issued to various Council members. Ultimately, the Grand Jury opted not to do so, concluding that: a) current members of the City Council will no

longer violate the Sunshine Law as the media coverage and this investigation have left a lasting impression in the minds of those currently serving on the City Council; b) enactment of the local Sunshine Ordinance should serve to minimize, if not eliminate, the prospect of future technical or non-criminal violations of the Sunshine Law; and c) the best form of accountability for these technical violations should rest with the electorate, who can decide not to vote for violators of the Sunshine Law in future elections.

As to the allegations that the City of Jacksonville failed to ensure transparency and fairness in local procurement practices, the Grand Jury was not presented with any evidence to conclude that criminal activity -- such as political or financial “payoffs” -- occurred as part of the deals involving ProLogic Consulting, Inc or GreenBean Corporate Organizing Solutions. The Grand Jury did, however, find that critical errors and omissions resulted in the improper award of City business to both ProLogic and GreenBean. These firms were improperly awarded City contracts as a consequence of a ubiquitous City business philosophy wherein City officials believe it is better to do City business with people they know. As a result of this investigation, however, several positive steps have been taken to enhance the likelihood that City contracts will be awarded in a fair, transparent, and cost-efficient manner, such as: a) creation of the position of in-house ethics officer for the City of Jacksonville; b) creation of an Inspector General’s Office designed to investigate allegations of improprieties within local government; and c) recognition by the Mayor of “deficiencies in the way the city procures professional services.”

The Grand Jury ultimately concludes that the problems addressed within this presentment occurred as a result of several larger institutional deficiencies that must be resolved. First, the Office of General Counsel’s role in promoting Sunshine Law compliance and ensuring ethical procurement practices appears unclear. General Counsel Richard Mullaney appears to view the

General Counsel's office strictly as the legal representative of the City and its officials rather than as an institution that has a larger responsibility to the residents of Jacksonville. Because the job of any city government is to promote the general welfare of its residents, the Grand Jury believes the General Counsel's Office should consider assuming additional responsibilities to ensure that Jacksonville's officials act in a manner that is both legal and is thoughtful of the public's interest. Moreover, Jacksonville's local officials are failing to use new technologies to increase the transparency of government and to reach out to interested citizens to enable greater participation and accountability within local Government. Until these larger problems are addressed, it is unlikely that the current public skepticism regarding the manner in which local business is conducted can be diminished.

As a result of this investigation, the Grand Jury sincerely hopes that Jacksonville's public leaders finally understand the importance of conducting the public's business in a transparent and forthright manner. The Grand Jury presents this final report in an effort to remind those who took an oath to serve the public of those civics lessons which were taught to them earlier in their lives and which were founded on the democratic principal that government is and should be the servant of the people, and it should be fully accountable to them for the actions which it supposedly takes on their behalf.

OPEN GOVERNMENT: RESTORING ACCOUNTABILITY AND PUBLIC CONFIDENCE IN JACKSONVILLE'S LOCAL GOVERNMENT

I. INTRODUCTION

The importance of honest and open local government in promoting the public welfare has been well understood since the founding of our nation.

- In the *Federalist* papers, Alexander Hamilton observed that “[u]pon the same principle that a man is more attached to his family than to his neighborhood, to his neighborhood than to the community at large, the people of each State would be apt to feel a stronger bias towards their local governments than towards the government of the Union.”¹
- In his book *Democracy in America*, Alexis De Tocqueville, the French political philosopher, explained why vigorous citizen participation in local decision-making was critical to the maintenance of American democracy.² De Tocqueville wrote that “[l]ocal assemblies of citizens constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people’s reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions, it cannot have the spirit of liberty.”³
- British political philosopher John Stuart Mill further explained that active and open participation in the affairs of local government is critical to providing “the practical part of the political education of a free people.”⁴

¹ *The Federalist* No. 17 (Alexander Hamilton).

² 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 61 (Phillips Bradley ed., 1945).

³ *Id.*

⁴ JOHN STUART MILL, *ON LIBERTY AND OTHER ESSAYS* 121-22 (John Gray ed., 1991)

Despite the critical role that local government plays in enhancing the quality of our daily lives, Jacksonville's residents have rarely felt as disengaged and disenchanting with their local government officials as they do today. Several recent allegations of impropriety involving Jacksonville's local government have caused Jacksonville's residents to "feel like nobody listens to them" and have contributed to the perception that "[i]f you are important and have money, you have access." Katie Dearing, vice chairwoman of Jacksonville's Ethics Commission, declared that Jacksonville "suffered a set-back in recent months wherein the public's perception is that ethics and 'doing the right thing' are not priorities for those in local government." The impression currently held by many Jacksonville residents is that their interests are routinely subordinated to those of land use consultants, lobbyists, and lawyers. This perception has contributed to creating an apathetic citizenry that manifests its indifference through record low voter turnout. And as apathy increases and voter turnout decreases, a vicious cycle emerges wherein local government decisions become even more susceptible to the influence of persons who can deliver campaign contributions and special-interest voting blocs.

Consequently, renewing the public's faith in the ethical nature of Jacksonville's local government is a vital task that must be undertaken to restore the "spirit of liberty" that De Tocqueville believed local governments should engender. Restoring public confidence in local government will require concrete action from both elected officials and private citizens. It is in this spirit that the following presentment enumerates the findings and conclusions of the Grand Jury with regard to its investigation into recently alleged improprieties within Jacksonville's local government. The purpose of this presentment is to educate the general public and local officials regarding the recent incidents that contributed to an erosion of public confidence in Jacksonville's local government, and to propose recommendations for restoring the public's

belief that its local officials are serving in good faith. Although we acknowledge that numerous other incidents not discussed within this presentment may also have contributed to declining public confidence in Jacksonville's local government, this presentment mainly focuses on the recent allegations that: 1) Jacksonville's City Council members failed to comply with Florida's Sunshine Laws; and 2) the City of Jacksonville failed to ensure transparency and fairness in local procurement practices.

Prior to discussing the Grand Jury's findings as to these allegations, this presentment will provide a general overview of the applicable laws that are relevant to this investigation and a summary of the basis by which this Grand Jury became involved in investigating the actions of local government officials. After detailing the Grand Jury's findings as to the allegations set forth above, this presentment will then focus on proposing constructive solutions designed to reduce the public's perception that local government officials operate in a culture of favoritism, self-dealing, unresponsiveness, and apparent disregard for public sentiment.

II. IMPORTANCE OF OPEN GOVERNMENT

A. Introduction

As explained by the Florida's Attorney General's Sunshine Law compliance manual, "open government provides the best assurance of government that is responsive and responsible to the needs of the people."⁵ Public confidence in Jacksonville's local government is positively correlated to the level of transparency employed by government officials in their decision-making processes. It is therefore not surprising that the current negative perception of local government -- as described by Jacksonville's Ethics Commission -- stems in large part from

⁵FLORIDA ATTORNEY GENERAL'S OFFICE, *FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW*, <http://myfloridalegal.com/pages.nsf/main/b2f05db987e9d14c85256cc7000b28f6!OpenDocument> (last visited December 26, 2007).

allegations published in the Florida Times-Union, which reported that local government officials engaged in “meeting practices that left the public out of hundreds of important meetings and showed a flagrant disrespect for the law.”⁶ As explained by the drafters of Florida’s Sunshine laws, “building and maintaining public trust in the institutions of government” cannot occur when government operates in secrecy.⁷

B. Florida’s Government-in-the-Sunshine Law

1. Text of the Provision

Since 1905, Florida has required that “[a]ll meetings of any city or town council or any board of alderman of any city or town in the state, shall be held open to the public of any such city or town”⁸ In 1967, Florida’s current Government-in-the-Sunshine Law was enacted to further increase transparency in all levels of government.⁹ The current Sunshine Law provides, in relevant part, as follows:

(1) 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, except as otherwise provided in the Constitution, 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.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

⁶ Carl Neil Cannon, *LEFT OUT: Why the Grand Jury Should Investigate Sunshine Law Violations and a Lack of Oversight of the City Council*, FLORIDA TIMES UNION, Sept. 11, 2007

⁷ Florida Attorney General, *Government in the Sunshine Manual*, at 3 (2007 Electronic Edition).

⁸ Peter H. Seed, *Florida’s Sunshine Law: The Undecided Legal Issue*, 13 U. FLA. J.L. & PUB. POL’Y 209, 215 (Spring 2002).

⁹ *Id.*

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.¹⁰

Put simply, the Sunshine Law imposes three simple requirements on all local government officials: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken.¹¹

2. Purpose and Enforcement of the Sunshine Law

As chronicled by legal scholars, the current version of the Sunshine Law was passed because the bill's supporters "felt that certain state and local practices, manifested in closed meetings and behind-the-scenes manipulation, indicated an urgent need for abolition of secretive government practices."¹² While all fifty states have enacted "open government" laws similar to the Sunshine Law,¹³ Florida is the only state where "the law is applicable to *any* gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which *foreseeable* actions will be taken by the public board or commission."¹⁴ As explained in the Florida's Attorney General's Sunshine Law compliance manual, this heightened level of transparency has its basis in the idea that "[i]t is the how and the why

¹⁰ FLA. STAT. § 286.011 (2007).

¹¹ Florida Attorney General, *Government in the Sunshine Manual*, at 7 (2007 Electronic Edition).

¹² Peter H. Seed, *Florida's Sunshine Law: The Undecided Legal Issue*, 13 U. FLA. J.L. & PUB. POL'Y 209, 268 n. 4 (Spring 2002).

¹³ *Id.* at 215.

¹⁴ Florida Attorney General, *Government in the Sunshine Manual*, at 28 (2007 Electronic Edition).

officials decided to so act which interests the public, not merely the final decision.”¹⁵ The Florida Supreme Court further explains that “[e]very thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties is a matter of public concern, and it is the entire *decision-making process* that the legislature intended to affect by the enactment of the [Sunshine Law.]”¹⁶

There are at least six adverse consequences that can occur if a public board member or commission member fails to comply with the Sunshine Law. The most serious consequence involves criminal penalties for officials who *knowingly* violate the Sunshine Law.¹⁷ Knowing violations of the Sunshine Law are considered second-degree misdemeanors that are punishable by up to 60 days imprisonment and up to \$500 in fines per violation.¹⁸ A knowing violation of the Sunshine Law is most commonly proven by introducing evidence that the public officer knew that he or she would be violating the Sunshine Law by holding a secret meeting with another council or board member to discuss public business and, nonetheless, conducted the secret meeting while also taking affirmative steps to conceal the meeting’s existence.¹⁹ Second, officials convicted under the Sunshine Law’s criminal provision may also be removed from office by executive order of the Governor.²⁰

The remaining consequences are less serious: the State Attorney may seek the levy of a fine against a government official for a “non-criminal infraction” where there was no intent on the official’s part to violate the Sunshine Law, but the official nonetheless violated the

¹⁵ *Id.*

¹⁶ *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds*, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985).

¹⁷ FLA. STAT. § 286.011(3)(b) (2007).

¹⁸ *Id.*

¹⁹ Peter H. Seed, *Florida’s Sunshine Law: The Undecided Legal Issue*, 13 U. FLA. J.L. & PUB. POL’Y 209, 213 (Spring 2002).

²⁰ FLA. STAT. § 112.52 (2007); Florida Attorney General, *Government in the Sunshine Manual*, at 83 (2007 Electronic Edition).

requirements of the law by failing to issue a timely notice of a scheduled public meeting or failed to maintain proper minutes of a public meeting.²¹ These actions are pursued in non-criminal proceedings in Circuit Court and each violation is punishable by a fine not exceeding \$500.²² These violations will be referred to herein as “technical violations” of the Sunshine Law.

Fourth, reasonable attorney’s fees must be assessed against a board or commission found to have violated the Sunshine Law.²³ Fifth, Florida’s Circuit Courts have the power to enter injunctive relief to prevent officials who committed past Sunshine Law violations from committing future violations.²⁴ And sixth, any public action taken in violation of the Sunshine Law is considered void *ab initio* and can be invalidated by a Florida Court.²⁵ This presentment will address the recent allegations that City Council members failed to comply with the Sunshine Law and will provide recommendations as to how the City can best ensure future compliance with the Sunshine Law and other ethical rules.

C. Procurement

Procurement is the process by which the City of Jacksonville purchases, leases, or rents items such as supplies, equipment, services, insurance, and even surety bonds.²⁶ With an annual budget of over \$1.4 billion, the city of Jacksonville spends a significant amount of taxpayer revenue each year to procure goods and services for the city.²⁷ As a result, Jacksonville’s procurement code recognizes that “preservation of the integrity of the public contracting and

²¹ FLA. STAT. § 286.011(3)(a) (2007); Florida Attorney General, *Government in the Sunshine Manual*, at 83 (2007 Electronic Edition).

²² *Id.*

²³ FLA. STAT. § 286.011(4) (2007).

²⁴ FLA. STAT. § 286.011(2) (2007); Florida Attorney General, *Government in the Sunshine Manual*, at 85 (2007 Electronic Edition).

²⁵ FLA. STAT. § 286.011(2) (2007); Florida Attorney General, *Government in the Sunshine Manual*, at 87 (2007 Electronic Edition).

²⁶ See City of Jacksonville, *Procurement Division Internet Site*, available at <http://www.coj.net/Departments/Central+Operations/Procurement/default.htm>.

²⁷ See City of Jacksonville, *Annual Budget for the Fiscal Year Ending September 30, 2008*, available at <http://www.coj.net/NR/rdonlyres/ef4p3ii4rqpsiqz2gzzgwrwvdmxpp2x4lyc4ezlym55kv72yyghhdgkdtcd7f3erebkejrrnaxo2mxug7eqymna6fld/2007+2008+Annual+Budget+121007.pdf>

purchasing process of the City is vital and is a matter of great public interest.”²⁸ The procurement code thus mandates that “[t]he procedures of the City for determining with whom the City transacts business exist to secure for the public the benefits of free, fair, and open competition among those persons whose conduct reflects good citizenship for the public.”²⁹ Given this mandate, the stated purpose of Jacksonville’s procurement department is to “ensure the integrity of public contracting and purchasing.”³⁰

For the award of government contracts, Jacksonville’s procurement code provides that “the formal procurement of supplies, contractual services and capital improvements shall be purchased by formal written contract and/or agreement based upon an award via competitive sealed bid to the lowest, responsive, responsible bidder meeting or exceeding advertised specifications”³¹ According to a November 29, 2007, report of the Office of the Inspector General, bid specifications for information technology consulting services required potential vendors to comply with bid qualifications such as: “1) a three-year in-business minimum; 2) audited or reviewed financial statements; 3) insurance minimum stipulations; 4) a conflict of interest statement; and 5) submission of a rate schedule per consultant job category.”³² The purpose of these bid specifications was to achieve “an equitable and consistent approach in the selection of vendors when the need for service arises.”³³

As Jacksonville Mayor John Peyton recognized in an Open Letter to the Community, however, there have recently been “deficiencies in the way the city procures professional services” and, thus, creation and enforcement of equitable and consistent procurement policies

²⁸ JACKSONVILLE, FL., CODE § 126.104(a) (2007).

²⁹ JACKSONVILLE, FL., CODE § 126.104(a)(1) (2007).

³⁰ JACKSONVILLE, FL., CODE § 126.104(a)(4) (2007).

³¹ JACKSONVILLE, FL., CODE § 126.202 (2007).

³² Office of the Inspector General – City of Jacksonville, *Prologic/IT Review*, Report No. 08-01 at 2 (Nov. 29, 2007).

³³ *Id.* at 12-13.

have become vital to “maintain[ing] the highest standards of accountability and integrity in the operation of [Jacksonville’s] government.”³⁴ This presentment will address the causes of the recent irregularities in the City’s procurement process and will provide recommendations as to how the City can best provide a fair and transparent procurement process for all businesses.

III. FACTORS CONTRIBUTING TO THE PUBLIC’S PERCEPTION THAT LOCAL OFFICIALS FAILED TO COMPLY WITH ETHICS LAWS SUCH AS THE SUNSHINE LAW THAT SEEK TO ENSURE OPEN AND ACCOUNTABLE GOVERNMENT

A. Inexperience of Public Officials

As a practical matter, Sunshine Law non-compliance is often attributable to the lack of experience and/or familiarity with the law that many local officials possess when they are elected to public office. For instance, it is noteworthy that of the 19 current members of Jacksonville’s City Council, only two possess law degrees.³⁵ Scholarly journals explain that as “the proportion of lawyers in the White House, Congress, and state analogs has decreased during the past quarter-century,”³⁶ persons who “tend to see unnecessary red tape in administrative and judicial procedures” have increasingly become involved in government.³⁷ While it is easier for lawyers to understand the Sunshine Law as a prohibition on what are essentially “ex-parte” communications outside of the presence of the general public, non-lawyer politicians are accustomed to operating in the business world where behind the scenes negotiations are often critical to making deals. Consequently, it is more important than ever to ensure that elected

³⁴ John Peyton, *Open Letter to the Community* (Aug. 28, 2007) available at <http://www.news4jax.com/news/13995547/detail.html>

³⁵ See City of Jacksonville Internet Site, *The Jacksonville City Council*, available at <http://www.coj.net/City+Council/City+Council+Members.htm>.

³⁶ Jeffrey W. Stempel, Lawyers, *Democracy and Dispute Resolution: The Declining Influence of Lawyer-Statesmen Politicians and Lawyerly Values*, 5 Nev. L. J. 479, 488 (Winter 2004-2005).

³⁷ Mark Miller, *Congress and the Constitution: A Tale of Two Committees*, 3 SETON HALL CONST. L.J. 317, 361 (Fall 1993).

officials are kept apprised of all ethics laws -- including the Sunshine Law -- that are designed to ensure that Government business is conducted in an honest and transparent manner.

B. Previous Allegations of Impropriety

Public concern regarding the lack of transparency and honesty in Jacksonville's local government rose dramatically after the publication of several news stories accusing local government officials of engaging in secret backroom deals against the public's interest. For instance, the Florida Times Union reported that former Jacksonville City Council members may have acted contrary to the public's interest by advocating for, and subsequently approving, an upscale development on Black Hammock Island. On June 13, 2006, the City Council voted by a 14-2 margin to approve the construction of 143 luxury homes on Black Hammock Island despite concerns that the project would cause significant damage to the environment.

The public's cynicism regarding approval of a development project on Black Hammock Island was exacerbated by three separate actions taken by the City Council. First, the project was approved during a hearing in which many City residents were mocked and belittled by Council members for voicing concerns about the project. Second, suspicions of impropriety arose after former Council Members Lad Daniels and Warren Alvarez lobbied the Land Use and Zoning Committee to approve the development on Black Hammock Island even though Jacksonville's Planning Department had previously rejected the proposal and dozens of residents had voiced their concerns regarding the project. The actions of Council members Daniels (who was president of the First Coast Manufacturing Association) and Alvarez (who is engaged in the property development and management business) were considered to be contrary to the public interest and subsequently prompted lawsuits from environmental groups and residents of Black Hammock Island. Finally, even though Paul Fletcher, the developer of Black Hammock Island,

had promised to make \$265,000 worth of concessions to the City to remove failed septic tanks, connect homeowners to the city's sewer system, and build a fire station in the Black Hammock Island area, Council Member Daniels defeated an amendment to accept Fletcher's concessions, arguing that Fletcher (a sophisticated developer who would not agree to concessions that would be adverse to his economic interests) had already done enough for the City.

The Black Hammock incident served to exacerbate previously existing public frustration with Jacksonville's local government that had arisen after reports surfaced that local officials disbursed \$36.5 million to TriLegacy Group LLC in incentives for public improvements to the Jacksonville Shipyards only to later uncover that TriLegacy spent less than \$15.4 million on improvements.³⁸ A previous Grand Jury panel found that the City failed to exercise due diligence in entering into and negotiating the Shipyards Redevelopment Agreement and found that the City failed to properly monitor the progress of the project. Specifically, the Grand Jury found that City officials had improperly entered into the agreement with TriLegacy because it had no development experience, had refused to provide financial statements, refused to provide a feasibility study, refused to make a personal guarantee, and refused to use a traditional draw contract to ensure that City money was only paid out *after* work was completed.

While the TriLegacy investigation was occurring, public perception of local government was also being adversely affected by media reports that "council members [were] conniving with each other and the city's power brokers, and in the process violating Sunshine laws" by meeting in a so-called "green room" adjacent to City Council chambers during City Council and committee meetings.³⁹ The media was prohibited from entering the "green room" even though lobbyists were routinely permitted to enter the room during recesses of City Council meetings to

³⁸ Paul Pinkham, *TriLegacy Cleared in Shipyards Inquiry*, FLORIDA TIMES UNION, September 12, 2007.

³⁹ Ronald L. Littlepage, *End City Council's Invitation-Only Backroom*, FLORIDA TIMES UNION, June 19, 2005.

speak to City Council members regarding matters being discussed at the meeting. The “green room” allegations resulted in a crisis of public confidence in which citizens were presented with concrete evidence that there was insufficient transparency and public oversight throughout local government.

IV. RECENT ALLEGATIONS OF SUNSHINE LAW VIOLATIONS INVOLVING JACKSONVILLE’S CITY COUNCIL

A. Florida Times Union Story

In an article published on June 14, 2007 entitled “*Do you know when and where your City Council is meeting?*” the Florida Times Union reported that numerous meetings among members of Jacksonville’s City Council “were held without prior public notice and without a written account of the proceedings.”⁴⁰ The Florida Times Union reported that Jacksonville’s City Council has been “leaving [the public] out of [its] own public business for years” and was exhibiting “an ingrained council culture of apathy, carelessness and arrogant disregard for the law.”⁴¹ The Grand Jury praises the Florida Times Union for its investigative journalism and commends its writers, editors, and publisher for living up to the media’s proud tradition of being the “watchdog guardian of democracy which holds the government accountable on behalf of the public citizenry.”⁴²

Specifically, the Florida Times Union’s reporting alleged that City Council members committed both criminal and non-criminal violations of the Sunshine Law. For instance, the Florida Times Union reported that:

Hours before a Jacksonville City Council meeting last June, council leaders Kevin Hyde, Michael Corrigan and finance Chairman Daniel Davis met for breakfast at

⁴⁰ Beth Kormanik, *Do you know when and where your City Council is meeting?*, FLORIDA TIMES UNION, June 14, 2007.

⁴¹ Editorial, *PART 1: How City Council's culture kept you clueless about hundreds of public meetings among members*, FLORIDA TIMES UNION, June 16, 2007.

⁴² Louis J. Capocasale, *Using the Shield as a Sword*, 20 St. John’s J. Legal Comment. 339, 370 (Spring 2006).

an Avondale diner. Hyde, a lawyer, described the gathering as a “client breakfast” on his calendar. Davis simply listed the location. Corrigan revealed the topic of discussion as “finance/budget.” . . . Three of the most powerful members of the council met. No public notice was filed. No written record was kept. The law requires both when two or more members of a board gather to discuss the public’s business.⁴³

Similarly, as to the manner in which many members of the City Council conduct public business, the article further reported that:

The Times-Union examined the daily calendars of all 19 council members from June 1, 2005, to Dec. 1, 2006. The computer-assisted analysis documented 307 scheduled meetings, excluding committee and full council meetings. Forty-seven calendar listings dealt with specific items of city business such as the Cecil Field referendum, city contracts and downtown traffic but were held without prior public notice and without a written account of the proceedings. Another 77 meetings had no notice or minutes but the calendars don’t reveal a purpose. Council members later said the get-togethers were for lunch, prayer sessions or political events, but in most cases public business was not discussed. The remaining 183 meetings were publicly announced, though written accounts of the proceedings exist for only one-third of those meetings, the analysis showed. Ten of the 19 council members kept no notes at all, while others provided no useful information.⁴⁴

In addition to suggesting that City Council members violated the Sunshine Law, the Times-Union also indicated that City Council members might have taken steps to conceal evidence of possible Sunshine Law violations. For instance, the Times-Union reported that:

Hyde’s records make it difficult to verify his claims that he does not mix public business with private meetings. The Times-Union obtained his calendar from the council secretary. It showed five entries listed as “client meetings,” “client breakfasts” or other “breakfasts.” Those entries were blacked out in a version provided by his office in response to an open records request. The public records law allows officials to redact private information. However, other council members’ calendars show that Hyde was scheduled to meet with them at those times. Hyde said no one on the council is a client. Hyde acknowledged the get-togethers in an interview. He said “client breakfast” was meant to indicate that the meeting did not involve city business. Mullaney, the city lawyer, said items involving city business should not be redacted. “If somebody turns over

⁴³ Beth Kormanik, *Do you know when and where your City Council is meeting?*, FLORIDA TIMES UNION, June 14, 2007.

⁴⁴ *Id.*

something to you in which they have taken out something that's legitimately a public record, that's a public records violation," he said.⁴⁵

Subsequent to the publication of its original article, a Times Union editorial called for the Grand Jury to investigate this matter, explaining that "City Council members talking to a reporter is far different from council members testifying under oath before a grand jury with a perjury charge hanging over their heads if they don't tell the truth."⁴⁶

B. Public Outcry to Investigate Alleged Improprieties within Jacksonville's City Council

As a result of the Florida Times Union's story, a significant public outcry emerged in favor of conducting a Grand Jury investigation into the Jacksonville City Council's meeting practices. State Attorney Harry Shorstein informed the City Council that he had personally received a "significant number" of letters urging an investigation into the Jacksonville City Council's activities.⁴⁷ The Florida Times Union additionally reported that "the public's confidence in government [had] eroded."⁴⁸ Consequently, recognizing the importance of ensuring that the City Council strictly comply with the Sunshine Law's requirements, the Grand Jury undertook an investigation of the City Council to determine whether criminal Sunshine Law violations had been committed by Council members and -- equally as important -- whether any other crimes had been committed as a result of Sunshine Law non-compliance.

⁴⁵ *Id.*

⁴⁶ Ronald L. Littlepage, *Grand jury needs to probe council's culture of secrecy*, FLORIDA TIMES UNION, June 15, 2007.

⁴⁷ Beth Kormanik, *Shorstein scolds council on meetings*, FLORIDA TIMES UNION, June 27, 2007.

⁴⁸ Ronald L. Littlepage, *Grand jury needs to probe council's culture of secrecy*, FLORIDA TIMES UNION, June 15, 2007.

V. THE GRAND JURY'S INVESTIGATION, FINDINGS, AND CONCLUSIONS WITH REGARD TO CITY COUNCIL COMPLIANCE WITH THE SUNSHINE LAW'S REQUIREMENTS

A. Scope of the Grand Jury's Investigation

For the past several months, this Grand Jury has investigated certain aspects of the manner in which the City of Jacksonville does business. This extensive investigation lasted six months, with the term of the Grand Jury having been extended 90 days pursuant to Florida law.⁴⁹ Specifically, two main questions were investigated: (1) Do Jacksonville City Council members meet in secret to discuss public business; and (2) Are City contracts awarded on the basis of favoritism? In addition to investigating the Florida Times Union's allegations that Jacksonville's City Council members violated the Sunshine Law, this Grand Jury has also investigated the manner in which the Mayor's Office spends tax dollars after suggestions of government favoritism appeared in the press due to the award of a City of Jacksonville Information Technology Department (ITD) contract in August 2006 to a company -- ProLogic Consulting, Inc. -- owned in part by Mayor John Peyton's former Chief of Staff, Scott Teagle⁵⁰, and after the award of a City contract to GreenBean Corporate Organizing Solutions (GCOS), a company owned by Sheila Green, a close friend of the Mayor.⁵¹

The Grand Jury's investigation did not focus on the current Jacksonville City Council, as the subject of this investigation was the Jacksonville City Council as composed between June 2005 and December 2006. During that period, the Council consisted of the following members:

⁴⁹ See § 905.085 Fla. Stat. (2005).

⁵⁰ See Mary Kelli Palka, *City's hiring of tech firm faces review*, FLORIDA TIMES UNION, August 7, 2007.

⁵¹ See Mary Kelli Palka, *City cancels no-bid contract*, FLORIDA TIMES UNION, August 15, 2007.

Jacksonville City Council Members

District 1:	Lake Ray (former Councilman)
District 2:	Lynette Self (former Councilwoman)
District 3:	Richard Clark
District 4:	Suzanne Jenkins (former Councilwoman)
District 5:	Art Shad
District 6:	Sharon Copeland (former Councilwoman)
District 7:	Pat Lockett-Felder (former Councilwoman)
District 8:	Gwen Yates (former Councilwoman)
District 9:	Reggie Fullwood (former Councilman)
District 10:	Mia Jones
District 11:	Warren Alvarez (former Councilman)
District 12:	Daniel Davis (former Council President)
District 13:	Arthur Graham
District 14:	Michael Corrigan

At-Large Council Members

Group 1:	Ronnie Fussell
Group 2:	Elaine Brown (former Councilwoman)
Group 3:	Lad Daniels (former Councilman)
Group 4:	Kevin Hyde
Group 5:	Glorious Johnson

While the Grand Jury's investigation pertains solely to the prior City Council, it is submitted that the current City Council should pay close attention to our findings and recommendations. The issues investigated by the Grand Jury -- allegations of Sunshine Law violations and government

favoritism -- are issues of great public importance. Ultimately, these matters involve the nuts and bolts of the manner in which Jacksonville's elected officials perform their critical duties. Public skepticism regarding local government's inclination and ability to produce positive results for the citizenry will persist until government officials can convince the public that they do not conduct secret business and do not award hard-earned taxpayer dollars to friends under the guise of government contracting.

The Grand Jury began its investigation in July 2007. Pursuant to its investigation, the Grand Jury listened to hours of testimony from more than 20 witnesses and received voluminous exhibits produced to the State Attorney's office. This investigation reviewed the day-to-day operations of the various institutions of local government -- such as the City Council and the Mayor's Office -- and examined the relationships among these various institutions. In this regard, the Grand Jury questioned witnesses throughout local government ranging from the Planning Department, the General Counsel's Office, the Council Auditor, the Council Secretary, current and former employees of the City of Jacksonville, and current and former City Council members and staffers.

The Grand Jury was not provided with the raw data relied upon by the Florida Times-Union during its 18 month investigation. The Grand Jury was, however, able to gather much of the same evidence obtained by the Times-Union in the form of: (1) calendars of current and former City Council members; (2) calendars of current and former Executive Council Assistants; (3) emails of current and former City Council members; (4) cellular telephone records of current and former City Council members; (5) public meeting notices; and (6) public meeting minutes.

B. Testimony Before the Grand Jury

1. General Testimony

The Grand Jury invited a number of current and former City Council members to meet with the Grand Jury during its investigation. Each current and former City Council member who appeared before the Grand Jury did so voluntarily, and with counsel.⁵² The following current and former Council members appeared before the Grand Jury:

Councilman Daniel Davis;
Councilman Michael Corrigan;
Councilman Kevin Hyde;
Councilman Art Shad;
Councilwoman Mia Jones;
Councilman Richard Clark;
Councilman Ronnie Fussell;
Councilman Arthur Graham;
Councilwoman Glorious Johnson;
Former Councilman Lad Daniels;
Former Councilwoman Elaine Brown;
Former Councilman Lake Ray;
Former Councilman Warren Alvarez;
Former Councilman Reggie Fullwood;
Former Councilwoman Sharon Copeland

The Grand Jury thanks these current and former Council Members for voluntarily appearing before the Grand Jury and providing testimony as to the matters under investigation.⁵³

⁵² Councilwoman Glorious Johnson appeared voluntarily and without counsel.

⁵³ Former Councilwoman Gwen Yates had an outstanding record of Sunshine Law compliance during her service as a Council Member and agreed to meet with the Grand Jury. Unfortunately, because of a prior commitment that required her attention on several consecutive Thursdays (the day the Grand Jury is in session) the Grand Jury was unable to meet with Mrs. Yates.

During questioning, each current and former Council member was directly asked whether they had ever held a meeting to discuss public business with another member of the City Council in which notice was not given to the public and in which no minutes of the meeting were kept. Stated differently, each former and current City Council member who appeared before the Grand Jury was asked whether that member had ever participated in or conducted a secret meeting in violation of Florida's Sunshine Law. Without fail, each former and current City Council member denied violating Florida's Sunshine Law. Not one former or current member of the City Council who testified before the Grand Jury even remotely admitted to what might be described as an honest or inadvertent Sunshine Law violation.

Most of the Council members who testified indicated that they had been instructed that meetings among the members in which procedural or intra-Council matters were to be discussed did not fall within the purview of the Sunshine Law. For instance, several of Council member Hyde's calendar entries note the subject "Temperature Check." These meetings purportedly involved a general discussion by then Council President Hyde with individual members after heated or contested meetings. The purpose was allegedly not to discuss substantive matters coming before the Council, but to improve personal relationships among members of the Council. Similarly, meetings among Council members who were interested in pursuing Council leadership positions and, who lobbied colleagues for support, were thought not to have been within the purview of the Sunshine Law.

The first Council member to appear before the Grand Jury was Councilwoman Glorious Johnson. The Grand Jury thanks and applauds Councilwoman Johnson for her openness and candor. Councilwoman Johnson provided critical insight into the issues examined by the Grand Jury by asking the significant question of who benefits from the passage of legislation by the

Council which does not appear to be in the public interest? As explained by Councilwoman Johnson, citizens naturally expect that public corruption exists when they observe wasteful or poor decisions made by the City Council without meaningful public debate. Councilwoman Johnson aptly reinforced a notion that became apparent throughout the course of the Grand Jury's investigation – i.e., public perception that the Council has exhibited a culture of indifference to the Sunshine Law has fostered a belief that local government is acting unscrupulously and, thus, undermines public confidence in local government regardless of whether actual corruption can be proven.

2. Testimony Regarding Meetings among Council Members in which no Public Notice was Given and no Meeting Minutes were Kept

Of the instances in which City Council members are alleged to have violated the Sunshine Law, it is the instances in which City Council members are alleged to have met when no notices were issued or minutes were taken that were of significant concern to the Grand Jury. Interestingly, a contrary argument was persuasively advanced by Councilman Richard Clark, who suggested that Council members intent on violating the Sunshine Law would likely not place joint calendar entries indicating an appointment or meeting with another council member. The Grand Jury believes that Councilman Clark is likely correct in stating that if two members are intent on violating the Sunshine Law, chances are there will be no record of any such secret meeting in a Council member's calendar. While the Grand Jury is inclined to agree with Councilman Clark, it cannot help but suspect that many Sunshine Law violations might still occur as the result of what the law defines as "reckless" as opposed to "knowing" conduct. Pursuant to the Model Penal Code, "[a] person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material

element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation." This Grand Jury believes that the Council members' calendar entries reflect reckless conduct that is almost as serious as knowingly committing a Sunshine Law violation. Nevertheless, criminal penalties are only levied upon knowing violators of the Sunshine Law and, thus, the Grand Jury ultimately agrees that persons who knowingly seek to disregard the Sunshine Law will not place secret meetings on their calendar. Nevertheless, this presentment will now address several meetings that were particularly troublesome to the Grand Jury.

Although there are other examples of what might be described as vague or non-descript calendar entries involving meetings among Council members, several incidents stand out. First, an encounter among Council members Hyde, Corrigan, and Davis that occurred on June 27, 2006 at the Fox Restaurant. Council member Hyde's calendar for June 27, 2006 indicated a "Client breakfast" between 7:30 AM and 8:30 AM. Council member Davis's calendar for June 27, 2006 indicated "Fox Restaurant" between 7:30 AM and 8:30 AM. Council member Corrigan's calendar for June 27, 2006 indicated "CP Hyde & CP Davis - - CP Hyde Re: Finance/Budget" between 7:30 AM and 8:00 AM. To further add to the suspicion of a Sunshine Law violation, Council member Hyde's calendar entry had been redacted before being produced.

Council members Hyde, Corrigan, and Davis each testified before the Grand Jury regarding these allegations. Each Council member has served in a leadership position within the City Council. All three denied that public business was discussed at the June 27, 2006 meeting at Fox Restaurant. Council member Hyde testified that the purpose of the meeting was to

discuss upcoming events surrounding Council member Corrigan's installation as Council President. Traditionally, when a new Council President is installed, a reception is held to commemorate the occasion. Council member Hyde testified that the three Council members met to discuss raising funds for the reception to honor Council member Corrigan. Council member Corrigan testified before the Grand Jury that although the language of his calendar entry indicated the meeting concerned "budget/finance" issues, no City budget or finance matters were discussed.

As a practicing attorney residing in Avondale, Council member Hyde testified that he regularly has breakfast at the Fox Restaurant because it is convenient to his home. While serving as Council President, Council member Hyde continued to maintain his law practice and tried diligently to maximize efficiency by regularly scheduling appointments at the Fox Restaurant to meet with clients, members of the press, and with members of the Mayor's office. There are numerous entries in Hyde's calendar between 2005 and 2006 in which he met with people who were not members of the City Council at the Fox Restaurant. Council member Hyde denied ever conducting public business with another City Council member at the Fox Restaurant.

As for the redacted calendar entry regarding the June 27, 2006 "Client breakfast," Council member Hyde's Executive Council Assistant ("ECA"), Allison Miller, testified that *she* redacted the entry, not Hyde. Council member Hyde's calendar contained entries germane to both his law practice and his duties as a Council member. In response to the Times Union's public records request, Ms. Miller went through his calendar and redacted those entries she believed involved Council member Hyde's law practice. According to Ms. Miller, she redacted his calendar after receiving advice from the General Counsel's office and subsequently provided the calendar in response to the public records request. Both Council member Hyde and Ms.

Miller testified that the redaction was inadvertent and did not display an effort to conceal the existence of a meeting in which Hyde and other City Council members conducted public business.

Council member Hyde also responded to the Times-Union's report that Hyde jokingly dubbed the Fox Restaurant as "City Hall west annex" because so much Council business was discussed at the Fox.⁵⁴ Ms. Miller testified that she made an entry in Council member Hyde's calendar when scheduling an appointment with someone who was not a member of the City Council referring to the Fox as "City Hall west annex." Ms. Miller testified that it was she, and not Council member Hyde, who used the language "City Hall west annex" when referring to the Fox Restaurant. Council members Hyde and Corrigan share a personal friendship that extends beyond the Council, and often met for breakfast or lunch.

Similarly, former Council members Lad Daniels, Warren Alvarez, and Lake Ray regularly met at a men's prayer breakfast. Numerous calendar entries show Daniels, Alvarez, and Ray together on several mornings between 7:30 AM and 8:30 AM. In response to allegations that the breakfast meetings included discussions of public business, each former Council member testified that no public business was ever discussed at these prayer breakfasts. In addition, Council member Davis and former Council member Reggie Fullwood, a former employee of a commercial developer who now works on his own as a developer, often met for lunch as well. Finally, along the same lines, Council members Daniel Davis and Ronnie Fussell are related by marriage and enjoy a friendship that pre-dates either member's service on the City Council. Council members Davis and Fussell both testified that they regularly met for lunch. Councilman Davis is the Executive Director of the Northeast Florida Builder's Association

⁵⁴ Beth Kormanik, *Do you know when and where your City Council is meeting?*, FLORIDA TIMES UNION, June 14, 2007.

(NEFBA). Councilman Fussell has been in the land development business for a number of years and has served as past president of NEFBA. Both Council members testified that they did not discuss public business during their regular lunches. They both testified that they discussed NEFBA and family issues. To the public, Council members Davis's and Fussell's association with NEFBA gives the impression that they may have met to discuss deals favorable to land developers and contractors.

3. Testimony Regarding the Quality of the Notices Typically Issued to Inform the Public of an Upcoming Public Meeting

The Grand Jury also examined the quality of the notices provided in a number of instances in which City Council members conducted public meetings and public meeting notices were actually issued prior to the meeting. Of the approximately 184 notices announcing public meetings issued between January 2005 and November 2006, 57 notices were issued within less than 24 hours from the time of the scheduled meeting. An additional 19 notices were issued within 48 hours of the scheduled meeting. A majority of former and current City Council members indicated that they had been told that at least 24 hours should be given before conducting a meeting in which public business was to be discussed. Moreover, training materials provided by the Office of General Counsel confirm that virtually all of the Sunshine Law presentations to City Council members suggested that 24 hours notice was acceptable.

C. Findings and Conclusions of the Grand Jury with Regard to its Sunshine Law Investigation

1. Meetings among Council Members in which no Public Notice was Given and no Meeting Minutes were Kept

The Grand Jury finds that the Council members' calendar entries indicate that observance of Sunshine Law formalities was not a paramount concern to many of Jacksonville's City

Council members. As Councilwoman Johnson suggested, calendar entries, which show meetings with other Council members that were not noticed to the public, give the impression that a secret meeting to discuss public business was intended. The calendars of the City Council members between June 2005 and December 2005 revealed almost 50 occasions in which a former or current City Council member's calendar indicated an appointment or an engagement with another City Council member where no record or any meeting notice or meeting minutes can be found. In addition, the Grand jury reviewed almost 80 meetings conducted between June 2005 and November 2006 in either a conference room or a committee room within City Hall and discovered that written minutes were kept in barely 10 percent of those meetings.

As might be expected, the Grand Jury did not have the benefit of any testimony from any other persons present at the Fox Restaurant on June 27, 2006 who may have witnessed the gathering of Council members Hyde, Davis, and Corrigan. There were no witnesses who could testify that they observed the three Council members and distinctly heard discussions regarding public business that was pending before the Council. By the same token, the Grand Jury also did not receive any testimony to corroborate the explanation provided by the three Council members. Ultimately, for the purposes of this criminal investigation, the absence of incriminating testimony renders it virtually impossible for the Grand Jury to reach the conclusion that Council members Hyde, Davis, and Corrigan likely committed a crime on June 27, 2006 at the Fox Restaurant.

It is not against the law for members of the City Council to have breakfast or lunch together so long as no public business is discussed. The Grand Jury, however, examined almost 80 calendar entries from June 2005 to December 2006 among various City Council members in which no notice was provided and no minutes were kept. A significant number of these entries

were recorded during times that are traditional breakfast or lunch hours. Moreover, the Grand Jury heard various opinions from Council members as to the absence or presence of Sunshine Law compliance by other members. Council members, however, were not asked to name other Council members who they believe may have knowingly violated the Sunshine Law. Most Council members simply rejected the notion that Sunshine Law compliance was ever as poor as had been alleged by the Florida Times-Union.

The Grand Jury cannot help but express skepticism with the testimony provided by Council members who indicated that public business was never discussed at any of these breakfast or lunch meetings. The Grand Jury finds that many Council members displayed a curious absence of candor in failing to admit that, at a minimum, it is possible that unintentional Sunshine Law violations may have occurred in the past. This absence of candor is especially disconcerting because it is belied by common sense. As social scientists have noted, there is always a “temptation to talk about work” when co-workers are in social settings.⁵⁵

Nevertheless, proving that a criminal Sunshine Law violation likely occurred requires a higher threshold of evidence demonstrating more than a mere suspicion of impropriety. In order to establish probable cause to believe that a criminal violation of the Sunshine Law occurred, the Grand Jury needed to receive evidence indicating that Council members were intentionally holding a secret meeting to discuss upcoming public business when they knew the meeting would violate the requirements of the Sunshine law. This evidence was simply not received during the Grand Jury’s investigation. Accordingly, the Grand Jury lacked probable cause to believe that criminal Sunshine Law violations had occurred.

2. Quality of the Notices Typically Issued to Inform the Public of an Upcoming Public Meeting

⁵⁵ Professional Lawyer, *Ethics and Conflicts of Interest*, 10 No. 4 Prof. Law. 10 (Summer 1999).

The Grand Jury is of the belief that while some circumstances might dictate the reasonableness of providing only 24 hours of notice of a public meeting, such short notice should no longer be the norm. If City Council members wish to discuss public business in the presence of the public as contemplated by the Sunshine Law, the timing of the notice should ensure that the greatest number of citizens who wish to attend the meeting can make arrangements to attend. The majority of the business of the City Council occurs during normal working hours or in the hours shortly after normal working hours. Short notice of public meetings places an undue burden on working citizens or citizens with childcare or other responsibilities. City Council members should consciously strive to provide every opportunity for the public to attend any scheduled public meeting.

Furthermore, the calendars of several council members were inconclusive as to whether a scheduled meeting had been held or cancelled. Several members testified that they did not have any standard procedure in place for documenting the cancellation of a noticed meeting. If a noticed meeting was subsequently cancelled, some members issued cancellation notices while others did not. Many members' calendars also failed to indicate whether meetings had been cancelled. Consequently, the Grand Jury recommends that, in the future, members' calendars should reflect whether a scheduled meeting has actually been held or was subsequently cancelled.

3. Other Violations

In addition to failing to find probable cause to establish that any Council member committed a criminal violation of the Sunshine Law, the Grand Jury did not find that probable cause existed to establish that City Council members might have committed other crimes. It is logical to suspect that if criminal violations of the Sunshine Law had indeed been occurring, at

least some of these meetings might have had a nefarious purpose. Accordingly, the Grand Jury examined several projects voted on by the entire City Council. The projects examined involved contested zoning applications and planned urban developments. In reviewing these projects, the Grand Jury examined the integrity of the legislative process, rather than the propriety of the decision reached with regard to any particular project. The Grand Jury focused upon whether the legislative process appeared to be flawed in any material respect or appeared to be inappropriately manipulated by any Council member(s). At the conclusion of its investigation, the Grand Jury found no evidence indicating that Council members violated the Sunshine Law in order to criminally manipulate the legislative process.

4. Changes in Sunshine Law Compliance After Commencement of this Investigation

Upon learning of the Florida Times Union's investigation, Jacksonville City Council President Michael Corrigan publicly admitted that mistakes had been made in the past and proposed a new ordinance designed to increase the level of future compliance with the Sunshine Law. In addition, General Counsel Richard Mullaney advised Councilman Corrigan that "the council's actions could be suspect." Consequently, on June 26, 2007, the Jacksonville City Council passed the Jacksonville Sunshine Law Compliance Act ("Compliance Act") by a 16-0 vote. The Compliance Act provides that its purpose is to "ensure compliance with the Sunshine Law, F.S. Ch. 286, and to create procedures, methods, best practices and education that will enhance compliance with open meeting laws, and enhance and maintain public confidence and transparency in the legislative practices of the City Council."⁵⁶

The Compliance Act mandates many positive new changes that should increase the level of compliance with the Sunshine Law. For instance, the Act provides that "[c]ouncil Public

⁵⁶ JACKSONVILLE, FL., CODE § 15.101 (2007).

Meeting notices shall be provided on the Council's internet website” and that “[n]otice of Council Public Meetings shall be posted for at least 24 hours prior to the meeting, not including weekends and holidays.”⁵⁷ Moreover, the Act requires that “[p]ublic locations shall be used for all Council Public Meetings”⁵⁸ and that “[e]ach Council member is responsible for the taking and preparation (or delegation thereof) of the minutes of each Council Public Meeting noticed by that Council Member.”⁵⁹ The Act also requires Council Members to receive annual Sunshine Law training from the Office of General Counsel,⁶⁰ and creates an annual review of Sunshine Law compliance by the Council Auditor and the City Ethics Officer.⁶¹ Although the Compliance Act will likely improve Sunshine Law compliance and record keeping for those Council members who seek to comply with the Sunshine Law, no law can ultimately prevent determined Council Members from meeting in secret to discuss public business. Accordingly, the Grand Jury believes it is ultimately the duty of the public, the media, the General Counsel’s office, the Council Auditor, the Inspector General and the City Ethics Officer to hold City Council Members accountable whenever there are suspicions of impropriety.

The Grand Jury believes that this investigation, and the significant media coverage devoted to this issue, will cause current and future Jacksonville City Council members to recognize and appreciate the importance of complying with Sunshine Law and the local Sunshine Ordinance.

More importantly, the testimony of current and former Council members indicates that these members now understand the magnitude of this issue and realize that Sunshine Law compliance is critical to engendering public trust and confidence in local government. Many

⁵⁷ JACKSONVILLE, FL., CODE § 15.103 (2007).

⁵⁸ JACKSONVILLE, FL., CODE § 15.104 (2007).

⁵⁹ JACKSONVILLE, FL., CODE § 15.106 (2007).

⁶⁰ JACKSONVILLE, FL., CODE § 15.108 (2007).

⁶¹ JACKSONVILLE, FL., CODE § 15.107 (2007).

current members of the Council testified that they do “business” differently. It is important, however, that Council members do not engage in extreme self-correcting behavior that impairs the functioning and collegiality of the City Council. Many current Council members testified that, as a result of the Times-Union coverage and this investigation, they no longer socialize with other members of the Council.

Clearly, reasonable measures can be put in place to ensure governmental transparency while permitting collegiality amongst Council members. For instance, the need for more detailed calendar entries is apparent. If a meeting will simply be a social interaction not involving public business, the Council member’s calendar should plainly state the collegial purpose of the meeting and indicate that no public business will be discussed. Similarly, calendars should clearly note meetings in which the intent is to discuss public business.

Moreover, Council members can do more to ensure compliance with the Sunshine Law. Too often, testimony was given indicating that one member assumed that another member understood their responsibilities under the Sunshine Law. To his credit, former Council President Hyde issued a memorandum in 2005 discussing the use of the so-called “Green Room.” In this memorandum, Councilman Hyde reminded other Council members of their duties and responsibilities under the Sunshine Law. But other than Councilman Hyde’s memorandum, very little testimony was provided which indicated that one Council member would correct another Council member or would follow up after a meeting to determine whether minutes had been kept or recorded. The failure of one Council member to follow the Sunshine Law can be averted by the diligence of the other 18 members.

5. Technical Violations of the Sunshine Law

While the Grand Jury found no probable cause to establish that either a former or a current Council member had committed a criminal Sunshine Law violation, there is certainly evidence of technical or non-criminal Sunshine Law violations. These violations are punishable by a fine not exceeding \$500. The Grand Jury gave serious consideration to causing technical or non-criminal infractions to be issued to various Council members. Ultimately, the Grand Jury opted not to do so for several reasons.

First, the objective of a monetary “fine” is to punish wrongdoers in order to ensure future compliance with the law and to deter others from committing similar violations. As discussed above, the sense of the Grand Jury is that current members of the City Council will no longer violate the Sunshine Law in any material respect. It is believed that the comments of the State Attorney who addressed the new City Council immediately prior to this investigation, as well as the news coverage of the Florida Times-Union, have left a lasting impression in the minds of those currently serving on the City Council. Moreover, the enactment of the local Sunshine Ordinance should serve to minimize, if not eliminate, the prospect of future technical or non-criminal violations of the Sunshine Law.

Second, the Grand Jury is mindful that City Council members are elected officials. Current and former Council members may have future political aspirations. One of the best checks on the negligent or intentional abuse of political power by an elected official is, in fact, a subsequent election. Former, current, and newly elected members of the City Council should have the same opportunity to fully review the details of this report and correct their behavior for the future. In the end, after carefully balancing the prospect of levying a meager \$500 in fines after a long and contentious trial versus the prospect of fully informing Jacksonville’s citizenry

regarding the actions of individuals that may be up for future election, the Grand Jury decided that the best form of accountability for these technical violations should rest with the electorate.

6. Sunshine Law Training for Elected Officials

As Florida Governor Charlie Crist has recognized, the Sunshine Law will only be effective in ensuring an open and transparent government if officials are “directed to attend training on the subjects of ethics, public records, open meetings, records retention, equal opportunity, and proper personnel procedures.”⁶² In this regard, Assistant General Counsel Steven Rohan testified before the Grand Jury that he has conducted virtually all of the Sunshine Law training given to Jacksonville City Council members for the past ten years.⁶³ Mr. Rohan’s Sunshine Law training sessions are usually given in conjunction with new member orientation. According to Mr. Rohan, he is usually told to give his presentation during a twenty to thirty-minute time period. Mr. Rohan believes his Sunshine Law training presentation provides City Council members with an adequate understanding of the Sunshine Law and is consistent with similar training sessions conducted throughout the State of Florida.

Despite having attended the training session provided by Mr. Rohan, many of the former and current Council members who testified before the Grand Jury indicated that their training was inadequate. Most also testified that if any questions arose, each knew they could contact the Office of General Counsel for advice. In fact, several Council members testified that they had personally contacted the General Counsel’s Office for Sunshine Law related advice.

The Grand Jury viewed a video recording of an actual Sunshine Law training presentation given by Mr. Rohan in conjunction with new member orientation. While it is

⁶² State of Florida, Office of the Governor, *Executive Order Number 07-01*, at Section 1 (Jan. 2, 2007).

⁶³ Grand Jury Testimony of Steven Rohan, Deputy General Counsel-Legislative Affairs Department, City of Jacksonville Office of General Counsel.

ultimately the responsibility of each Council member to learn about the Sunshine Law and to comply with its requirements, the Grand Jury questions the adequacy of the Sunshine Law training provided by the Office of General Counsel. The time allotted for the Sunshine Law training presentation is believed to be insufficient. While the essence of the Sunshine Law can be summarized by simply stating that two or more City Council members are prohibited from discussing public business without notice to the public and maintenance of minutes, the details of the Sunshine Law are not so easily explained. For instance, a meaningful discussion of what constitutes reasonable notice under the Sunshine Law cannot be realistically accomplished in less than ten minutes. Moreover, explanations regarding: (1) which particular meetings fall under the purview of the Sunshine Law; (2) what types of discussions are covered by the Sunshine law; (3) the proper method for taking and archiving minutes of public meetings; and (4) statutory and judicial exceptions to the Sunshine Law, cannot be provided in only thirty minutes.

More importantly, it is the Grand Jury's belief that the tone of Mr. Rohan's Sunshine Law training presentation is counterproductive to emphasizing the importance of strict adherence to the Sunshine Law's requirements. While humor can certainly be an effective teaching tool, too much humor detracts from the message that City Council members have a fundamental duty to comply with all aspects of the Sunshine Law. City Council members would be better served by a more in-depth Sunshine Law presentation whose tone reflects the vital importance of the subject matter.

In addition to training actual City Council members, it is critical that staff members also receive adequate Sunshine Law training. Each City Council member has an assistant who is a full-time employee of the City of Jacksonville and is known as an Executive Council Assistant ("ECA"). No current or former member of the City Council blamed his or her ECA for any

failure to comply with the Sunshine Law. Most members testified that they believed their ECA received Sunshine Law training and, thus, relied on their ECA to schedule meetings, maintain calendars and prepare meeting notices. The Grand Jury believes, based upon testimony from certain ECA's, that this training was similarly insufficient, resulting in unknowing non-compliance by the ECA's and the public officials they served.⁶⁴ Consequently, ensuring adequate training for these staff members is as important or possibly even more important than training the Council members themselves.

7. Unclear Role of the Office of General Counsel in Ensuring Sunshine Law Compliance

The relative inexperience of many City Council members is an important reason why Chief Deputy General Counsel Cindy Laquidara testified before the Grand Jury that it is the Office of General Counsel's obligation to give City government the tools to do their job. The Grand Jury thanks Ms. Laquidara for her candor and willingness to testify openly and frankly before this tribunal. Richard Mullaney, the General Counsel for the City of Jacksonville, also appeared before the Grand Jury and assumed responsibility for ensuring that City Council members are apprised of the Sunshine Law's requirements. He testified as to the efforts undertaken by the Office of General Counsel to train newly elected officials and stated that, in 1999, he personally oversaw the first orientation for newly elected Council members. Mr. Mullaney was familiar with the current Sunshine Law training his office provided and believed the training was appropriate and consistent with training provided throughout Florida.

⁶⁴ Within the City Council, there existed a generally understood practice for scheduling meetings with other Council members. If a Council member wanted to meet with another member to discuss public business, the ECA's of both members coordinated the meeting. The ECA of the Council member who called the meeting was generally understood as being responsible for preparing and posting a notice of the meeting. When called upon to schedule a meeting with another member of the Council, most, if not all, ECA's indicated that they inquired of their Council member as to whether the meeting would be a "noticed" meeting (i.e., one in which public business was to be discussed). Moreover, the ECA of the Council member who called the meeting was generally understood to be responsible for preparing or maintaining the minutes of the meeting.

Mr. Mullaney testified that he assumed Council members were conducting themselves in accordance with the Sunshine Law. He testified that he never personally witnessed a Sunshine Law violation, nor did he believe that his office had the responsibility to act as a policing agency for the purpose of monitoring Sunshine Law compliance. Mr. Mullaney did testify, however, that he would have taken appropriate measures had he personally observed or had reason to believe a Sunshine Law violation had occurred.

While the Grand Jury commends Mr. Mullaney for assuming responsibility for ensuring that City Council members are apprised of the Sunshine Law's requirements, the Grand Jury also believes that, his having assumed such responsibility, it is also reasonable to expect the office of the general counsel to assume the responsibility to monitor compliance. The Grand Jury believes that such a monitoring by the General Counsel's Office would likely uncover future incidents of non-compliance by members of the City Council.

VI. THE GRAND JURY'S INVESTIGATION, FINDINGS, AND CONCLUSIONS WITH REGARD TO LOCAL PROCUREMENT PRACTICES

A. Procurement Process

In addition to its investigation into alleged Sunshine Law violations by the City Council, the Grand Jury investigated allegations of favoritism in the Mayor's Office arising out of the Florida Times-Union's reports of improper awards of government contracts to close friends and associates of the Mayor.⁶⁵ As explained earlier, Jacksonville's procurement code recognizes that "preservation of the integrity of the public contracting and purchasing process of the City is vital and is a matter of great public interest."⁶⁶ Accordingly, the procurement code mandates that "[t]he procedures of the City for determining with whom the City transacts business exist to

⁶⁵ Editorial, *Crisis of Confidence*, FLORIDA TIMES UNION, August 19, 2007.

⁶⁶ JACKSONVILLE, FL., CODE § 126.104(a) (2007).

secure for the public the benefits of free, fair, and open competition among those persons whose conduct reflects good citizenship for the public.”⁶⁷

B. Public Concern Over Allegations of Improper Procurement Practices

As reported by the Times-Union, “grave mistakes on city contracts with two companies owned by close friends of [Mayor John] Peyton damaged public trust in the mayor’s management and integrity when he needs it most.”⁶⁸ Mayor Peyton has acknowledged the existence of “deficiencies in the way the city procures professional services” and specifically admits that “[t]he hiring of two contractors who were personal friends of [his], one of whom was a former staff member in the mayor’s office, should not have happened.”⁶⁹ While the Grand Jury commends the Mayor for accepting ultimate responsibility for the City’s improper award of taxpayer dollars to contractors, the Grand Jury believes it is important to understand why these contractors were awarded significant government dollars in a little less than one year, and to determine whether any crimes were committed as a result of these awards.

C. ProLogic Consulting, Inc.

As will be described in greater detail below, the Grand Jury’s investigation found a number of critical errors and omissions that resulted in ProLogic Consulting, Inc. (“ProLogic”) receiving a significant amount of City business. These errors and omissions included procedural errors and omissions as well as personal/individual errors and omissions.

For the period between 2004 and 2007, the City of Jacksonville employed a process for outsourcing needed information technology (IT) services that involved receiving competitive bids for the work. In this case the process involved selecting a firm, called a “vendor,” that

⁶⁷ JACKSONVILLE, FL., CODE § 126.104(a)(1) (2007).

⁶⁸ Editorial, *Crisis of Confidence*, FLORIDA TIMES UNION, August 19, 2007.

⁶⁹ John Peyton, *Open Letter to the Community* (Aug. 28, 2007) available at <http://www.news4jax.com/news/13995547/detail.html>

could function as a central provider of computer technicians, IT specialists, or other professionals who could perform IT work if and when the City determined it was needed. To be selected as a vendor, each firm was required to respond to the City's request for bid (RFB) that was sent out in December 2003 (Bid No.: SC-0460-04). The RFB sought a number of technical and computer service capabilities on the part of proposed vendors. One of those services was "technical consultant" service.

With few exceptions, government procurement is founded on competitive bidding principles. The principle underlying competitive bidding is that goods and services consumed or needed by government should be provided efficiently and in a cost effective manner to maximize limited taxpayer dollars. Competitive bidding also serves a second valuable purpose of ensuring that all qualified businesses have an equal opportunity to compete for government contracts.

The RFB in the ProLogic matter specified that each bidding firm was required to complete appropriate bidding forms, and -- because the RFB involved IT services -- the bidding firm was required to complete a form detailing the hourly rates the firm intended to charge for the consultants the vendor intended to provide. The "hourly rate schedule" listed both job titles and hourly rates for each service that the proposed vendor intended to provide to the City. Put simply, the "hourly rate" schedule indicates the amount of money the vendor seeks to receive from the City for the particular service provided.

In addition to completing the appropriate bidding forms, three additional requirements existed: (1) the firm had to be in business for at least three [3] years prior to bidding; (2) the firm was required to submit an independent auditor's report or accountant's review for the past year; and (3) the firm was required to provide proof of appropriate liability insurance. The Information Technology Department (ITD) received and analyzed various firms' responses to

the RFB and, in February 2004, recommended that twenty-seven [27] firms be selected as vendors to provide technical consultant services for the City. At the same time that the 27 firms were approved, twelve [12] additional vendors were disqualified for failing to meet the bid requirements discussed above. The General Government Awards Committee (GGAC) approved those 27 vendors later in the month. As defined by ordinance, the GGAC's role is to review recommendations for bid approvals from the appropriate City agency, award formal bids and contracts, and reject bids if the City's interest requires rejection.⁷⁰ Recognizing a desire to add firms to the vendor list from time to time in the future, it was determined that qualified firms could be added as vendors per the RFB if they met the same requirements as the original bidders. Since the initial 2004 award, eleven (11) vendors have been added to the approved vendor list.

In mid-August 2006, Dave Lauer, the City's Chief Information Officer, informed Jim Katz, head of IT Strategy and Communications, that Scott Teagle, Mayor Peyton's former Chief of Staff, was starting a firm and could supply a candidate for the head of a telecommunications job that was open in ITD. Lauer told Katz to handle the logistics of getting Teagle's firm, ProLogic, added to the vendor list of firms qualified to be selected as vendors per the original RFB.

ProLogic is essentially a staffing firm for computer and IT consultants. Like other types of staffing services, ProLogic recruits qualified candidates in an effort to fill IT positions in both the public and private sector. The "business" of ProLogic is to charge companies and government agencies a consulting fee in exchange for finding qualified people to fill full-time professional service positions. In a typical example, a consultant working for ProLogic might work for the City on a short-term basis with the expectation that if he or she did quality work, the City could then hire the consultant as a full-time employee. The length of the consulting period

⁷⁰ JACKSONVILLE, FL., CODE § 126.201(d)(3) (2007).

enabled the City to evaluate the qualities of prospective employees while enabling ProLogic the opportunity to recover its "finder's fee" for providing the consultant.

To expedite ProLogic's addition to the vendor list, Katz had an IT staff member pick up the RFB from the City Procurement Department and deliver the bid package to ProLogic. Moreover, the completed bid package was delivered directly from ProLogic to the ITD for review rather than being returned to the Procurement Department. The bid from ProLogic, received in mid-August 2006, revealed that ProLogic had no experience in placing anyone for any work in IT related services. In addition, several of the required forms were not completed, including the forms pertaining to screening consultants and the "hourly rate" schedule. Furthermore, none of the above-stated RFB requirements were met. The firm had not been in business for 3 years prior to submitting its bid. In fact, ProLogic had only been in business for less than 2 months at the time it completed its RFB bid package. ProLogic also failed to provide the required proof of appropriate liability insurance and the required financial statements from an independent auditor or accountant.

Despite these inadequacies, in a memorandum dated August 16, 2006, Mr. Lauer wrote the following to Mike Clapsaddle, the City's Chief of Buying and Administration:

The Information Technologies Division has received and reviewed the bid package for ProLogic Consulting, Inc. All of the required documents have been submitted. The requirements established within the computer related services supply contract have been met and I am requesting this vendor be added to the approved vendor list.

Mr. Lauer acknowledged before the Grand Jury that he did not personally review the requirements of the RFB and did not examine the bid submitted by ProLogic to determine whether ProLogic had satisfied the requirements of the RFB. As he was out of town for the better part of the first two weeks in August 2006, Mr. Lauer relied on subordinates within his

office to complete this task. Mr. Lauer sent his August memorandum, which he described as a "boilerplate" memorandum, to Mr. Clapsaddle upon his return to Jacksonville. Notwithstanding his representation that ProLogic met the bid requirements, Mr. Lauer testified that he believed the City's Procurement Department would disqualify a potential vendor who did not provide the necessary documentation. Mr. Lauer testified that he would not have recommended ProLogic's addition to the vendor list had he been aware of the three-year "in business" requirement contained within the RFB.

Subsequent to Mr. Lauer's August 16, 2006 memorandum, the matter of adding ProLogic to the vendor list was submitted for approval by the GGAC. During the GGAC meeting -- which occurred on August 17, 2006 -- concerns were raised that the bid submitted by ProLogic was incomplete. Nevertheless, the GGAC approved the addition of ProLogic to the vendor list and specified that the award was contingent upon the receipt of needed documentation. As required by City Ordinance, a member of the Office of General Counsel sits on the GGAC and was present when the ProLogic matter came before the committee.

During the Grand Jury's investigation, Mr. Lauer testified that he had known Scott Teagle since the time they worked together during the late 1990s at a firm known as Enterprise Technology. When Mr. Teagle became Mayor Peyton's Chief of Staff, Mr. Lauer was recommended as someone the City of Jacksonville should hire for a position within ITD. Once the City hired Mr. Lauer, he in turn hired Jim Katz. Mr. Lauer and Mr. Katz had worked together prior to working for the City.

Mr. Lauer testified before the Grand Jury that he had participated in a telephone conversation with Mr. Teagle in June 2006 in which both men discussed the City's IT "operational challenges." Mr. Teagle discussed his desire to return to the IT consulting business

and, thus, the conversation shifted to an impending telecommunications project in which the City sought to overhaul its entire telecommunications network. During this conversation, the name of an IT telecommunications expert known to both Teagle and Lauer was raised. The particular IT expert discussed was considered by both men to be the person best suited to manage the imminent telecommunications overhaul. The City subsequently secured the services of the coveted IT telecommunications expert through ProLogic after ProLogic was added to the vendor list in August 2006.

When asked during the Grand Jury's investigation why the City did not directly negotiate with the sought-after telecommunications expert to avoid unnecessary payment of ProLogic's fee, Mr. Lauer stated that he did not believe this would have been appropriate or ethical. Mr. Lauer testified that because ProLogic's business was to recruit candidates, Mr. Lauer did not think it would have been appropriate to negotiate directly with a candidate that was considered to be under the ProLogic umbrella. Consequently, in an effort to procure the services of the desired telecommunications expert, efforts were made to add ProLogic to the vendor list rather than to recruit the expert directly.

In addition to the telecommunications expert provided by ProLogic, the circumstances surrounding the addition of a different consultant ProLogic provided to the City are equally disconcerting. As with the telecommunications expert, Messrs. Lauer and Teagle held a telephone conversation about the City's need for a particular kind of technical consultant. After the telephone conversation, Mr. Teagle provided a consultant in May 2007 who met the requirements that had been set forth during the discussion. Mr. Lauer testified that his department could have simply solicited resumes for the consultant position and did not necessarily need to use ProLogic to obtain a qualified person to fill the position.

Both Mr. Katz and Mr. Lauer testified that ProLogic provided services to the City that created appropriate value for the money spent. Mr. Katz and Mr. Lauer based their belief on the fact that several consultants obtained through ProLogic have become quality full-time City employees.

In addition to the issues surrounding ProLogic's addition to the vendor list, additional concerns have been raised regarding the volume of purchase orders received by ProLogic from the City. After vendors have been selected and added to the vendor list, specific work for ITD is then awarded on an "as needed" basis to individual consultants. When ITD needs workers to complete a task, it drafts a statement describing the work and the time necessary to complete the work. These statements are then sent to the list of approved vendors who have previously been approved to provide the services being requested. Vendors are typically notified of a need for services through what is commonly referred to as a "blast" email to all vendors. After receiving this email, vendors can respond by sending resumes of their consultant candidates as well as other documents required by the City. The ITD member responsible for the work then selects the consultant best suited to perform the work after interviewing the candidates.

The purpose of the "blast" email -- or other analogous methods for soliciting city services -- is to permit all firms on the vendor list to have an equal opportunity to provide a consultant to the City for a particular job. If no blast emails or solicitations for services are sent to all firms which should receive such emails by virtue of the RFB process, the net result is the *de facto* conversion of a competitive bidding process into a sole source contract. Sole source contracts should only be considered acceptable where the contract value is small, not for contracts valued at \$500,000. In fact, competitive bidding is typically required for services in excess of \$50,000.⁷¹

⁷¹ See City of Jacksonville Central Operations Website (Procurement), available at <http://www.coj.net/Departments/Central+Operations/Procurement/Contracts+and+Bids.htm>

In addition to improperly placing ProLogic on the City's vendor list, the City's ITD spent well in excess of the limitations placed on ITD by the 2004 RFB. Mr. Katz testified that he was unaware of any spending limitations in the RFB and that he simply believed that ITD spending was dependent upon the ITD budget. Mr. Katz explained that ITD spent the amount of money it believed was budgeted each year for consultant services as part of the City's annual budget. Consequently, even though spending for vendors under the RFB that governed ProLogic's contract was capped at only a few hundred thousand dollars per year, ITD spent its entire budget allotment -- which far exceeded the RFB -- and totaled more than one-million dollars per year.

D. Findings and Conclusions of the Grand Jury with Regard to its Investigation into the ProLogic Contracts

Through its investigation, the Grand Jury found critical errors and omissions that resulted in the improper award of City business to ProLogic. It is plainly obvious from Mr. Lauer's August 16, 2006 memorandum that ITD represented to the City's Procurement Department that ProLogic met the requirements of the bid when it in fact did not. ProLogic failed to meet bid requirements in several significant ways. ProLogic had not been in business during the three years leading up to its bid. Moreover, ProLogic did not submit a meaningful "hourly rate" sheet with its bid. Finally, ProLogic did not provide the City with the required financial audit or review, nor did it include the required proof of applicable liability insurance coverage with its bid.

The Grand Jury was unable to conclude that political or financial "payoffs" occurred as part of the ProLogic deal, or that anyone in ITD benefited financially from the arrangement with ProLogic, or that ProLogic paid anyone within local government to be added to the vendor list. ProLogic was likely improperly added to the vendor list as a consequence of a ubiquitous City business philosophy wherein City officials believe it is better to do City business with people

they know. Several witnesses testified that this was a common philosophy shared throughout City Hall. Without question, the authorities within ITD knew Mr. Teagle. Knowing Mr. Teagle and believing his firm could provide services that the City needed, ITD took steps to do business with ProLogic while at the same time ignoring several important formalities.

Moreover, the General Government Awards Committee appears to have improperly relied upon the ITD representation that ProLogic met the requirements of the bid. Nevertheless, its approval of ProLogic occurred even though it was understood that required documentation had not been provided. GGAC's subsequent approval of ProLogic to the vendor's list on a contingency basis was improper in light of the fact that there was no evidence that any mechanisms existed to ensure that ProLogic would follow through to provide the required documentation. Had the awards committee simply deferred its vote or rejected the bid as being incomplete, ProLogic would likely not have been added to the vendor's list.

Other than providing the final acceptance of the GGAC's recommendations -- in what is often described as a ministerial function -- no evidence was presented to the Grand Jury which indicated that either the Mayor or any member of his staff was involved with the decision to add ProLogic to the vendor's list. Mr. Lauer testified that neither the Mayor nor anyone on the Mayor's staff contacted him to lobby on behalf of ProLogic or to seek a waiver of any procurement guidelines for ProLogic.

E. GreenBean Corporate Organizing Solutions

Like the ProLogic matter, claims of favoritism also arose out of the City's award of no-bid contracts to an organization efficiency firm, GreenBean Corporate Organizing Solutions ("GreenBean"), operated by Sheila Green, a friend of Mayor Peyton. Ms. Green worked with the Mayor's 2003 campaign and is a Mayoral appointee to two City Committees. GreenBean

was awarded a no-bid contract in 2006 to provide “30 hours of productivity consulting and organizing implementation for thirteen appointed staff members” at a rate of \$100 per hour. The Mayor’s Chief of Staff, Steve Diebenow, recommended extending the contract through July 2009 for an amount not to exceed \$112,000. GreenBean reported to the City that from both pre-session and post-session surveys and interviews with members of a division of the City of Jacksonville, there had been a 30% reduction in time-spent on-email; a 70% reduction in the number of emails; and a 25% reduction in time-spent looking for information.

F. Findings and Conclusions of the Grand Jury with Regard to its Investigation into the GreenBean Contracts

The GreenBean contract was formally cancelled prior to the conclusion of the Grand Jury’s investigation. As with the ProLogic matter, the Grand Jury received no evidence or testimony that the Mayor’s Office placed undue pressure or was otherwise intimately involved in the decision to award a no-bid contract to GreenBean.

G. Duval County Courthouse

The Grand Jury was also asked to conduct a financial review of the proposed Duval County Courthouse. The Grand Jury and the State Attorney have received numerous requests from people wanting to know how much money has been spent on the Courthouse project and what the money has been used for. In 2000, voters approved spending \$190 million on a new Courthouse complex as part of a larger \$2.25 billion growth management project referred to as the Better Jacksonville Plan. The first attempt to build the Courthouse ended unsuccessfully in 2004, as project cost estimates reached about \$300 million. The Courthouse was originally slated for completion by 2005.

Although gravely concerned with the delay in construction of a new courthouse as mandated by the citizens of Duval County, a thorough investigation was not practical due to

legally imposed time constraints. During its term, however, the Grand Jury and the State Attorney did request the Council Auditor to conduct an audit to compile all costs expended to date and to further include in its review the amounts of all contracts, the amounts expended pursuant to each agreement, what consideration was ultimately received as a result of the expenditures and other information deemed appropriate to advise the citizens of Jacksonville of the cost of the delay in construction. The Grand Jury anticipates that the Council Auditor's comprehensive and thorough accounting and review will be forthcoming.

H. Positive Effects of the Media Coverage and Grand Jury Investigation with Regard to Current City Procurement Practices

As stated above, subsequent to the Times Union's media coverage and the commencement of this investigation, Mayor Peyton openly acknowledged in an open letter to the community dated August 28, 2007, that there were "deficiencies in the way the city procures professional services."⁷² As a result of this investigation, several positive steps have been taken to enhance the likelihood that City contracts will be awarded in a fair, transparent, and cost-efficient manner. First, the City of Jacksonville has created the position of in-house ethics officer for the City of Jacksonville. Carla Miller, a former federal prosecutor and former chair of the Jacksonville Ethics Commission, currently holds this position. She is charged with training all City employees regarding both the letter and the spirit of the ethics rules and laws governing City officials.

⁷² John Peyton, *Open Letter to the Community* (Aug. 28, 2007) available at <http://www.news4jax.com/news/13995547/detail.html>

In addition, the City of Jacksonville has also taken the positive step of creating an Inspector General's Office designed to investigate allegations of improprieties within local government. Pamela Markham, formerly the Deputy Chief Administrative Officer and a longtime auditor in the Office of the City Council Auditor, currently holds this position.

The Grand Jury has reviewed the findings of the investigation conducted by the Inspector General and believes the Inspector General's findings and recommendations should be given great consideration and should be implemented in their entirety. We particularly agree with the Inspector General's recommendations that all future procurement proposals (including the evaluation of bid requirements) go through the Procurement Division and that the various Award Committees must take more seriously their duty to zealously ensure that all awards are in compliance with applicable code or RFB provisions. The Grand Jury also agrees that internal controls must be established to alert managers that contract/bid amounts have been exhausted. Finally, the Grand Jury believes that no further awards should be given on a "contingent" basis.

VII. ROLE OF THE OFFICE OF GENERAL COUNSEL IN ENSURING COMPLIANCE WITH PUBLIC ETHICS LAWS

In addition to the City Council and the Mayor's Office, the Grand Jury also examined the current role of the Office of General Counsel with regard to Sunshine Law compliance and procurement issues. As recognized by the General Counsel's website, the consolidated form of government that exists in Jacksonville provides the General Counsel's office with significant authority and, in turn, with significant responsibilities.⁷³ In both name and function, the General Counsel is the most important lawyer within Jacksonville City government. In addition to providing legal advice for all of Jacksonville's government agencies, the General Counsel's

⁷³ See City of Jacksonville Office of General Counsel Website (Procurement), available at <http://generalcounsel.coj.com/aboutus.asp>

office reviews hundreds of proposed ordinances that come before the City Council each year and actively participates in the City's procurement of goods and services. No review of the functioning of Jacksonville's government could be complete without a review of the General Counsel's office because of its institutional role within consolidated government.

After conducting this investigation, the Grand Jury finds that the Office of General Counsel's role in promoting Sunshine Law compliance and ensuring ethical procurement practices appears unclear. General Counsel Richard Mullaney testified that it is not the General Counsel's responsibility to determine whether City Council officials are violating the Sunshine Law or whether procurement practices are not sufficiently competitive. Mr. Mullaney appears to view the General Counsel's office strictly as the legal representative of the City and its officials rather than as an institution that has a larger responsibility to the residents of Jacksonville.

The Grand Jury commends Mr. Mullaney for recruiting a talented staff of former private attorneys with impressive experience and credentials such that the General Counsel's office is viewed as one of the community's finest law firms. And the Grand Jury recommends that those accomplished lawyers consider whether its role is larger than presently viewed. As Chief Deputy General Counsel Cindy Laquidara pointed out, the General Counsel's office has an obligation to give City government the tools to do their job. Because the job of any city government is to promote the general welfare of its residents, the General Counsel's primary aim should be to ensure that Jacksonville's officials always act in a manner that is legal and which seeks to advance the public interest.

VIII. RECOMMENDATIONS FOR THE FUTURE

A. Perception is Reality

The issues investigated by the Grand Jury are of great public importance. Ultimately, the legitimacy of all local government action is tarnished when the public perceives its leaders to be self-interested and indifferent to the public interest. At the end of the day, local government officials should conduct their actions with one simple ethical guide in mind, "How would you feel if the action you are about to take would be printed in the next day's newspaper or viewed on this evening's local news?" If local officials are certain that their actions are legal and are proud to report their actions to the general public, positive public perception of local government will necessarily increase.

B. Reduction of the Role of Lobbyists and Campaign Contributions in Local Government

Much of the declining public confidence in political officials is attributable to the belief that decision-making is influenced by political lobbyists and campaign contributions. Consequently, local government can do more to ensure that this perception does not exist. Ordinances can be passed that eliminate the perception that public officials are repaying those persons or entities who contributed to their campaigns or who provided gifts. The Grand Jury doubts that simply capping the amounts of such gratuities will eliminate the present perception. Moreover, passage of proposed ordinances should always be preceded by spirited public debate so that the perception that government does not hear the people is significantly lessened.

C. Commitment to Open Government

The best antidote for declining public confidence in local government is greater transparency throughout all of local government's deliberative processes. The City of Jacksonville should make a concerted effort to post all public meetings on a prominent place on the City's website with as much notice as possible to ensure the attendance of the public and the media at any meeting in which attendance is desired. In addition, local media should consider

posting a section on their various websites informing the public regarding local meetings that may be of interest to a significant segment of the public.

Furthermore, given the recent advancements in technology and communication, there is no reason why public meetings cannot be recorded using digital audio and/or video technology and archived on the City's website. There is also no reason why a system cannot be devised to enable the public to participate during public meetings by sending comments via email or instant messaging system that can be read aloud during a public meeting before a decision is made or a vote is cast. If the City chooses to be proactive in using new technologies to bring public meetings closer to the people via the Internet, it can truly become a leader in revolutionizing the concept of open government.

D. Increasing the Number of Qualified Candidates and Contested Elections to Local Office

As discussed earlier, one of the best solutions for holding local officials accountable is contested elections. If the public is dissatisfied with its officials, they should have the option to select a qualified replacement. This solution, however, can only be employed if people of conscience are willing to sacrifice time with their families and from work to serve in local government. We believe that these people exist and want to get involved, but lack a means for entry into civic involvement. In this respect, current government can do more by reaching out to interested citizens through development of leadership programs that train interested persons to gain the tools necessary to become future local leaders. These programs should teach all concerned citizens about the duties, structure, and challenges of local government and should provide information regarding how to run for office and how to create a campaign structure that complies with all laws and ethics ordinances.

CONCLUSION

As the legislative history to the federal version of the Sunshine Law recognizes, “Government is and should be the servant of the people, and it should be fully accountable to them for the actions which it supposedly takes on their behalf.”⁷⁴ Confucius famously remarked that “[t]o see what is right, and not to do it, is want of courage or of principle.” As a result of this investigation, the Grand Jury sincerely hopes that Jacksonville’s public leaders finally understand the importance of conducting the public’s business in a transparent and forthright manner. The question remains whether they will also have the courage to make bold changes using new technologies to increase the transparency of government. At a minimum, this Grand Jury has faith that local officials will take their ethical obligations seriously and that this matter will not need to be revisited. Present and future officials should take heed of this presentment and should realize that the public’s tolerance for apathetic and self-interested government is waning and that future failures to strictly adhere to ethics and open government laws will not be tolerated.

⁷⁴ (U.S.C.C.A.N. 2183, 2186).

The Grand Jury directs that a copy of this presentment be furnished to Mayor John Peyton, the City Council for the City of Jacksonville, and all individual witnesses who presented testimony, and that the original be filed with the Clerk of the Court as a public record.

DATED this 17th day of January, 2008

George E. Schulz, Jr.
George E. Schulz, Jr.
Foreperson of the Duval County Grand Jury

I HARRY L. SHORSTEIN, State Attorney for the Fourth Judicial Circuit of Florida, in and for Duval County, hereby certify that I, as such Prosecuting Officer and as authorized and required by law, have advised the Grand Jury which returned this Report this 17th day of January, 2008.

Harry L. Shorstein
Harry L. Shorstein
State Attorney
Bar Number 093316