

**SPECIAL GRAND JURY CHARGE
GIVEN BY CHIEF JUDGE JAMES G.
BODIFORD
ON NOVEMBER 4, 2005**

Ladies and Gentlemen of the Jury, you have been selected, chosen and sworn to act as grand jurors during the present term of this court. This is a most important duty to which you have been called. You represent the county of Cobb and the State of Georgia in all matters which may come before you for investigation, and in all of your reports and presentments to the Court.

At the outset, I will give you certain instructions with reference to the legal organization and assembly of your body. To constitute a legal organization and assembly of your body, it is necessary that your number at all times be not less than 16 nor more than 23. The Court is authorized to empanel three alternates. In other words, to constitute a quorum for the transaction of business, you must have at least 16 of your number present in your jury room and qualified to act on the matter before you. In order to find a true bill or special presentment, it is necessary that at least 12 of your number shall vote in favor of such bill regardless of the number present and acting.

The Court has provided you with a full panel of 23 jurors. There will be occasions on which some of your members will be absent upon committee investigations. At other times it will probably be necessary that one or more of your number be temporarily excused for urgent personal or business reasons. By providing you with a full panel of 23, the court has made it possible for your foreman to grant such temporary excuses without the necessity for communicating with the court and without interrupting your deliberations.

Let me caution you that should it develop at any time that one of your number is related with the prohibiting degrees to a party under investigation, or interested in the matter under investigation, you should immediately excuse such person so disqualified so that he/she may retire from your room and not participate in the matter being considered. In filling in the names of the grand jurors acting on a bill or special presentment, you should see that the names noted therein constitute the ones actually participating and do not embrace anyone who may have been absent at the time. Failure to do this might result in quashing the indictment or special presentment and the necessity of referring the matter back to your body or to a subsequent grand jury for further consideration.

In a broad and general sense the oath you have taken indicates the duties that you are to perform. I repeat certain portions of that oath in order that you might clearly understand your duties: It provides that you shall diligently inquire and true presentment make of all such matters and things as shall be given you in the court's charge or shall come to your knowledge touching your present service. It further provides that you shall keep secret the deliberations of the grand jury unless called upon to give evidence thereof in some court of this state, and your oath concludes with the provision that you shall present no one from envy, hatred or malice, nor shall you leave anyone unrepresented from fear, favor, affection, reward or the hope thereof, but that you shall present all things truly and as they come to your knowledge.

Ladies and Gentlemen, this law as to the duties of the grand jury has been interpreted and clarified by our appellate courts to the effect that a grand jury has no right in the absence of specific statutory authority to file a report charging or casting reflections or misconduct in office upon a public officer or impugning his/her character, except by presentment or true bill of indictment charging such individual with a specific offense against the State. This is not

to infer that you, the grand jury , in exercising investigative powers of a civil nature cannot recommend the correction of a mistake or make recommendations, and that you may not make fair reports of your findings even though such reports of necessity incidentally show negligence or incompetency of public officials. You should be ever mindful in making your reports of your findings in your general presentments so that your reports do not contain statements unnecessary to the purpose sought to be accomplished by the report, which under the reasonable interpretation would be innuendo and by implication cast reflections of misconduct upon the public officers.

Ladies and Gentlemen, you are surrounded by the law with a necessary and proper cloak of secrecy and no grand jury should ever discuss any criminal matter that comes up before him/her. Grand Jurors should not discuss what was said or what was done in the grand jury room by another juror or by the district attorney, nor should any grand juror allow anyone to discuss with him/her any criminal matter that may come before the grand jury, including any investigation that might lead to a criminal prosecution.

The duties of the Grand Jury shall be confined to such matters and things as it is required to perform by the Constitution and laws or by order of any superior court judge of the superior court of the county.

In this regard, the Court charges the Special Grand Jury as follows:

- a) The Special Grand Jury is directed to investigate the procurement process used in the Power to Learn Initiative and whether any person or persons violated O.C.G.A. §16-10-8, known as FALSE OFFICIAL CERTIFICATES OR WRITINGS, O.C.G.A. §16-10-20, known as FALSE STATEMENTS AND WRITINGS; CONCEALMENT

OF FACTS, O.C.G.A. §16-10-22, known as CONSPIRACY IN RESTRAINT OF FREE AND OPEN COMPETITION, and such other statues that may become known to the Special Grand Jury;

- b) The Special Grand Jury is directed to investigate the procurement process used in the purchase of desktop computers using individual purchase orders in order to avoid any one purchase order exceeding the budgetary limit for any violations of state law;
- c) And for all other purposes as are allowed by law.

While conducting any investigation authorized by this charge, investigative grand juries may compel evidence and subpoena witness; may inspect records, documents, correspondence, and books of any department, agency, board, bureau, commission, institution, or authority of the state or any of its political subdivisions; and may require the production of records, documents, correspondence, and books of any person, firm, or corporation which relate directly or indirectly to the subject of the investigation being conducted by the investigative grand jury.

This grand jury is composed of representatives of all various pursuits and occupations, with a variety of experience. The fact that persons of your type and caliber forming a cross-section of the community can be impaneled by the court to perform the important duties of a grand juror is one of the bulwarks of a permanent representative form of government. The fact that you are willing to conscientiously serve with no hope or reward, practically unpaid, and performing your duties in secret without much public recognition is one act of citizenship to insure the blessings of a free government.

The ethics of grand jurors are akin to those of the judiciary, in that neither politics nor outside pressures should be even

remotely considered where the rights or property or the guilt or innocence of one accused of a crime are involved. The court is a forum wherein all the rights of a citizen should be calmly and responsibly considered and determined according to the impartial jurors on the evidence submitted to them. This, of course, applies to the grand jury and the trial jury. In short, we should ever be mindful that we are a government of law and not of men and women and that judges and grand jurors are not the depository of arbitrary power but judges and jurors under the sanction of law. As officers of the court, acting in our official capacities, we do not have the right to heed the dictates of our emotions, rather than the voice of reason and law.

During the present term of your service, you have the right to set the hours during which you will meet. Your foreperson has the right to excuse any one or more of your number for impelling personal or business reasons for one day during your deliberations, so long as there are at least sixteen of your members present to constitute a quorum. Any excuse for more than one day must be approved by myself or one of our judges.

The district attorney or his assistant will be in attendance with you constantly and will advise you specifically regarding any particular provision of the criminal laws that you may require. The law requires that myself or one of the judges of this court be in attendance whenever you are in session. If there should be any question that you feel the court needs to determine for you, let it be known and I will attempt to answer it.

The law requires periodic reports of this special grand jury to be delivered to me. These reports will be confidential. The first report shall be due on November 21, 2005 and the special grand jury shall make a report every fifteen (15) days thereafter. A final report will be due when the special grand jury has completed its tasks.

This is your duty to serve on this special grand jury and I do not apologize to you for calling you to serve. However, on behalf of the citizens of this county, I thank you for your anticipated hard work. When you have completed your duties as grand jurors, you will have the satisfaction of knowing that you have fulfilled one of the highest duties of good citizenship.