

Agents accused of misconduct

ACCUSED / from 1BR

an IRS prosecution in Colorado recently featured on *60 Minutes* that shares some allegations with the Sunrise case — victories are rare.

Observers say they cannot remember a similar attack on a prosecutor's behavior during a grand jury investigation ever producing a dismissed indictment or conviction in a South Florida courtroom. (Every indictment for a federal felony, the first step toward a possible conviction, must be supported by a grand jury of citizens who review evidence presented by a prosecutor during secret sessions.)

And some of those familiar with judges' reactions to such allegations say defense attorneys probably will need to prove not only that March intentionally abused his position to win the indictments, but that whatever missteps he might have made seriously hurt the defendants' chances to avoid indictment.

"You've got to show that the misconduct prejudiced the client, not just that the government was overbearing or whatever," said Ronald Meshbesh of Minneapolis, president of the National Association of Criminal Defense Lawyers.

The prosecutor's job as an advocate for the government's case is generally considered to allow wide latitude in handling grand juries and interviewing witnesses.

"He has an obligation not to mislead the grand jury," said Jon A. Sale, a defense lawyer and part-time professor who is a former chief assistant U.S. attorney. "But the grand jury is a one-sided proceeding, and he has a legitimate role as its legal adviser."

Michael Pasano, who recently went into private practice after heading the U.S. attorney's Fort Lauderdale office, pointed out that the grand jury room in Fort Lauderdale adjoins the U.S. attorney's office.

Though a judge formally instructs each grand jury and reviews its work, Pasano said, "prosecutors get very close to the grand juries they administer and to

some extent that's the way it's supposed to be."

The response issued by the U.S. attorney's office in Miami last week gives up little ground. It labels some of the claims inaccurate, others legally unsound and all of them far short of the kind of misconduct necessary to taint the validity of the indictments.

Allegations of government leaks to the press take up much of the defense motion to dismiss the indictments.

Occasional leaks of grand jury testimony by witnesses, attorneys and prosecutors are not uncommon.

For example, Edward Kay, attorney for former Waste Management official Harold Stockett during a bribery case last fall, said his client won the right to see otherwise secret state grand jury testimony because The Miami Herald had published articles based on the testimony.

"Since The Miami Herald knew more than we did, we felt entitled to every line of that material," Kay said.

But Kenneth Lipman, a former federal prosecutor and the attorney for suspended Sunrise City Councilman John Montgomery, said a series of articles on the Sunrise case that appeared in The Herald and The Fort Lauderdale News and Sun-Sentinel during the grand jury investigation was unprecedented in his experience.

Such articles encourage grand jurors to think they must produce indictments and also make it harder to find a fair jury later on for the trial, Lipman said. Grand jurors are not sequestered during their investigations, though they are told that, to protect the reputations of witnesses and grand jury targets, it is illegal to discuss testimony outside the jury room.

Lipman said his argument that the government orchestrated a smear campaign through the media is easier to prove in the Sunrise case than in others because The Herald sometimes identified its sources as federal officials.

March wrote a memo to federal officials working on the case reminding them of the law prohibiting public discussion of grand jury testimony following the publication of one article about the case last fall, the government now asserts.

Defense attorneys said allegations that March overstepped his authority in dealings with the grand jury and witnesses must be considered as a package.

Some of the defense claims may appear minor by themselves, but taken as whole they make a strong case, said Bruce Zimet, the attorney for Sunrise Planning and Zoning Board member Robert O'Keefe and a former chief federal prosecutor for Broward and Palm Beach counties.

"As a prosecutor, you probably shouldn't have a conversation like that over drinks," Zimet said of the Garden Lounge meeting, "but that is only one element in the totality of the case that bothers us."

In its response, the government claimed that the witness interviewed at the bar, health-care company president William McKettrick, asked March, an FBI agent and an IRS agent to meet with him over drinks instead of in a more formal setting.

The government also said McKettrick was never improperly threatened, but simply told that if the government could prove he was involved in the alleged extortion of Sunrise officials he could be charged with mail fraud.

Defense attorneys are trying to build a defense similar to one that convinced a federal judge in Colorado to throw out all charges against an alleged tax dodger in September. The judge found that federal agents had distorted evidence presented to a grand jury and widely publicized the subjects of a grand jury investigation as "part of an improper attempt to embarrass the targets."