

U.S. GRAND JURY INSTITUTE, INC.

Investigative Report on Grand Jury Conduct Monroe County, Tennessee



February 11, 2010

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PURPOSE, SCOPE & DISPOSITION

PURPOSE

The purpose of this report is to document and report on the findings of an independent investigation conducted by U.S. Grand Jury Institute, Inc., hereafter referred to as USGJI, Inc., into allegations of misconduct by the Monroe County, Tennessee Grand Jury, involving a case brought by retired United States Naval Officer Lieutenant Commander Walter Francis Fitzpatrick III.

SCOPE

It is the policy of USGJI, Inc. to follow the evidence and facts wherever they lead when it comes to matters of grand jury integrity. It is USGJI, Inc.'s unwavering belief that the citizens of each of these United States are entitled to a grand jury process that is not only completely above reproach and free of ethical improprieties, but that grand juries are established and managed within the spirit and intent of the law so that even the appearance of corruption and conflict of interest are avoided.

USGJI, Inc. focused this investigation on the events brought to light by Commander Fitzpatrick's contact with the Monroe County Grand Jury from August 2009 to the present. Specifically, USGJI, Inc. looked into obstruction, the selection process and composition of the Monroe County Grand Jury.

DISPOSITION

The results of this investigation will be provided to state and local officials and law enforcement authorities if it is determined that any of the facts and evidence found warrant further formal investigation, legal action or criminal prosecution. The results of this investigation will also be made available to the general public, individuals and organizations upon request.

BACKGROUND

Retired United States Navy Lieutenant Commander Walter Francis Fitzpatrick III is a Citizen of the State of Tennessee who has resided in Monroe County in the town of Sweetwater since October of 2007.

Commander Fitzpatrick has been pursuing justice via the Monroe County Grand Jury since at least August of 2009 to the present, and although USGJI, Inc. has no role in that case, this report is based upon anomalies found in the Monroe County Grand Jury while observing the manner in which the Monroe County Grand Jury performed, or failed to perform its sworn duty.

The oath for a Tennessee Grand Juror reads as follows:

"You as members of the grand jury do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, of all offenses given you in charge, or otherwise brought to your knowledge, committed or triable within this county; that you will keep secret the state's counsel, the other jurors' and your own; that you will present no person from hatred, malice, or ill will, nor leave any unrepresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but that you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God."

USGJI, Inc. takes no direct position concerning Commander Fitzpatrick's case in this report. However, USGJI, Inc. is very concerned with events surrounding that case, as those events demonstrate potentially illegal, unethical and unconstitutional practices in the Monroe County Grand Jury system and processes.

Based on the anomalies, conflicting information and questionable practices released to the media surrounding Commander Fitzpatrick's case and the Monroe County Grand Jury, USGJI, Inc. commenced its own independent investigation on January 11, 2010 at the request of Commander Fitzpatrick.

DISCUSSION

USGJI, INC.'S INTERESTS IN THE MONROE COUNTY GRAND JURY

Specifically, USGJI, Inc. is interested in the following practices and procedures;

- The Constitutional Purpose and Intent of a Grand Jury
- The manner in which members of the Grand Jury are impaneled
- The unbiased and impartial nature of a Grand Jury
- The oath and obligations of a Grand Jury

INVESTIGATIVE TOOLS USED BY USGJI, INC.

USGJI, Inc. relied upon the testimony of individuals engaged with the Monroe County Grand Jury and/or county courts, specific open records requests for information related to the impaneling, practices and procedures of the Monroe County Grand Jury, and review of related Tennessee codes and rules of procedure pertaining to the Grand Jury.

OBSTRUCTION OF JUSTICE

Testimony from Commander Fitzpatrick includes charges of obstruction against the Monroe County Grand Jury, based upon Commander Fitzpatrick's repeated efforts to present evidence of criminal activities to the Monroe County Grand Jury, and the repeated efforts by Jury and court members to prevent said evidence from being presented.

Commander Fitzpatrick's efforts to present said evidence to the Grand Jury were based upon the constitutional purpose of a Grand Jury, within the guidelines stated in Tennessee law which includes the following purpose of a Grand Jury:

"A member of the grand jury, the prosecutor, or a private citizen may suggest that the grand jury investigate a person, place, or business for possible criminal activity. If the grand jury chooses to launch this probe, it may use its power to issue subpoenas to compel people to testify and bring records and other things with them to the grand jury. If the grand jury finds that crimes are being

committed, it can issue a presentment, which is a formal allegation that a named person or business has committed a crime. The presentment serves exactly the same function as an indictment.” Criminal Procedure: The Post-Investigative Process, Cases And Materials 11-12 (Neil P. Cohen & Donald J. Hall, 2nd ed., Lexis 2000).

Further, **Rule 6 (f)** of the Tennessee Rules of Criminal Procedure states:

“Individual Grand Juror's Duty to Inform. If a member of the grand jury knows or has reason to believe that an indictable public offense has been committed in the county, he or she shall inform the other jurors, who shall investigate it.”

Yet all efforts by Commander Fitzpatrick to present evidence of crimes were rejected at the door, without review, by the Monroe County Grand Jury, even after members of the Grand Jury were well aware of Commander Fitzpatrick's repeated efforts to present such evidence.

IMPANELING A GRAND JURY

Rule 6, (a) (1) – of the Tennessee Rules of Criminal Procedure states the following, as it relates to the legitimate procedure for impaneling a Grand Jury:

“Formation at a Regular Term. On the first day of each term of court at which a grand jury is required to be impaneled, the judge of the court authorized by law to charge the grand jury and to receive its report shall direct the names of all the qualified jurors in attendance for the criminal courts of the county to be written on separate slips of paper and placed in a box or other suitable receptacle and drawn out by the judge in open court. The foreperson and the twelve qualified jurors whose names are first drawn constitute the grand jury for the term and shall attend the court until dismissed by the judge or until the next term.”

Rule 6 (g) (2) states that a Grand Jury Foremen must meet all of the normal qualifications applied to any other juror, which includes the need for the Foreman to be selected from a random pool of potential jurors, within the guidelines and limitation of the process allowed.

Rule 6 (g) (3) limits the term of a Grand Jury Foreman to a maximum of two (2) years.

Monroe County Grand Jury Foreman Gary Pettway has served as Grand Jury Foreman for twenty-seven (27) years, further indicating that he was not selected by any random process from a new pool of potential jurors at any time in the last twenty-six (26) years.

