

U.S. GRAND JURY INSTITUTE, INC.

Investigative Report on Grand Jury Conduct Monroe County, Tennessee



February 11, 2010

CONTENTS

Purpose, Scope and Disposition Page 2

Background Page 3

Discussion Page 4

Findings Page 9

Recommendations Page 11

Appendices Page 12

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.

USGJI, INC. OPEN RECORDS REQUEST FOR INFORMATION

On January 12, 2010 USGJI, Inc. sent an open records request for information to the Monroe County Circuit Court Clerk, Ms. Martha Cook. The following questions were asked:

1. What is the process of selecting the grand jury members in Monroe County and who is involved in that process?
2. How long has Mr. Gary Pettway been involved with the Monroe County Grand Jury both as a juror and as jury foreman?
3. What stipends past and present are being paid to Mr. Pettway?

USGJI, Inc. further requests the release of ALL information in regards to the process of selecting the grand jury in Monroe County for the past 20 years to include the names of all judges, prosecutors and any personnel that have access to information about the grand jury in Monroe County.

MONROE COUNTY CIRCUIT COURT CLERK RESPONSE

USGJI, Inc. received the following response from the Ms. Cook in a letter dated January 21, 2010 which stated:

"I have attached and also attempted to answer your request for information.

1. *Process selection of Grand Jury/ I have attached copies of TCA 22-2-101 which describes the procedure. As to who is involved, I serve as jury coordinator and also a deputy clerk in my office assist me.*

Two Grand Juries are impaneled in December and serve for a period of 1 year. They rotate months for appearing. Example: Panel 1 report in Jan. Panel 2 Feb. Panel 1 March, etc

2. *Mr. Pettway has served as Grand Jury Foreman for appx 27 years.*
3. *Mr. Pettway receives \$15.00 per day for his service.*

I think I have answered all the questions you requested."

SEE EXHIBITS A & B.

Also included in Ms. Cook's response of January 21, 2010 was a second letter which seemed to be added as an afterthought. It stated the following:

"On Jan. 14, 2010, this Office received your open records request to inspect/receive copies of ALL INFORMATION in regards to the process of selecting the grand jury in Monroe County for the past 20 years to include the names of all judges, prosecutors and any personnel that have access to information about the grand jury in Monroe County. After reviewing the request, the Office is unable to provide you with either all or part of the requested records.

The basis for this denial is No such records exists.

The law which this denial is based on is TCA 10-7-503 (2) (B) (5)

If you have any other questions please contact me."

SEE EXHIBIT C.

Note: A copy of TCA 10-7-503 (2) (B) (5) was not included with Ms. Cook's second letter. USGJI, Inc. has since been unable to confirm that any such law exists.

SEE EXHIBIT D.

USGJI, INC. OPEN RECORDS REQUEST FOR ADDITIONAL INFORMATION

On January 28, 2010 USGJI, Inc. sent an open records request for additional information to Monroe County Circuit Court Clerk, Ms. Martha Cook. The following two questions were asked:

1. By what or whose authority has Mr. Pettway served as Foreman of the Monroe County Grand Jury for the past 27 years?
2. Are the Jurors and Foreman for the Monroe County Grand Jury selected manually or by the automated means as discussed in TCA 22-2-301?

MONROE COUNTY CLERK RESPONSE

USGJI, Inc. received the following response to the request for additional information from Ms. Cook in a letter dated February 1, 2010 which stated:

"In your request for additional information received by this office on 2-02-10, the answers to your questions are as follows:

- 1. The foreperson of the Grand Jury is appointed by the judge of Criminal Court.*
- 2. Our jury selection is totally automated."*

SEE EXHIBIT F.

FINDINGS

After a thorough review of the applicable sections of the Tennessee Code and the Tennessee Rules of Criminal Procedure and comparing it to the answers provided by the Monroe County Circuit Court Clerk, USGJI, Inc. arrived at the following findings:

- It is the opinion of USGJI, Inc. that the Monroe County Grand Jury has been tainted and corrupted by the continuous service of Mr. Gary Pettway as Grand Jury Foreman for the past 27 years.
- It is the opinion of USGJI, Inc. that the random selection processes required by law and rules of procedure for impaneling a Grand Jury were not followed in Monroe County.
- It is the opinion of USGJI, Inc. that evidence of obstruction exists in the matter involving Commander Fitzpatrick's repeated and failed efforts to present evidence of criminal activities to a Grand Jury, obligated by oath to hear and act upon such evidence.
- It is the opinion of USGJI, Inc. that the purpose, intent and function of the Grand Jury in Monroe County Tennessee has been tainted to the degree as to cause great concern for the legitimacy of the Monroe County Grand Jury and its ability to carry out justice in an unbiased and impartial manner.

It is the opinion of USGJI, Inc. that sufficient evidence exists to believe that the following laws from the Tennessee Code have been violated:

TCA 22-1-101. Obligation to serve — Qualifications.

It is policy of this state that all qualified citizens have an obligation to serve on petit juries or grand juries when summoned by the courts of this state, unless excused. Every person eighteen (18) years of age, being a citizen of the United States, and a resident of this state, and of the county in which the person may be summoned for jury service for a period of twelve (12) months next preceding the date of the summons, is legally qualified to act as a grand or petit juror, if not otherwise incompetent under the express provisions of this title.

TCA 22-2-310. Impaneling jurors - additional jurors.

(a) The members of the grand and petit juries shall be made up as provided by law from the jury pool. In the event the original jury pool does not include a sufficient number of jurors, courts shall follow the procedures in subsection (b) for securing additional jurors. These additional names shall supplement, not replace, the original jury pool. These procedures shall be repeated, as necessary, until the grand and petit juries are completed.

TCA 22-2-314. Limitation on jury service as follows:

A juror who has completed a jury service term shall not be summoned to serve another jury service term in any court of this state for a period of twenty-four (24) months following the last day of such service; however, the county legislative body of any county, may, by majority vote, extend the twenty-four-month period.

Further, it is the opinion of USGJI, Inc. that sufficient evidence exists to believe that the following Tennessee Rules of Criminal Procedure have been violated:

Rule 6 (f) of the Tennessee Rules of Criminal Procedure:

***"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."*

Rule 6 (a) (1)

***"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)

***"Qualifications of Foreperson.** The foreperson shall possess all the qualifications of a juror."*

Rule 6 (g) (3)

"The foreperson shall hold office and exercise powers for a term of two (2) years from appointment. In the discretion of the presiding judge, the foreperson may be removed, relieved, or excused from office for good cause at any time."

RECOMMENDATIONS

USGJI, Inc. recommends that all Grand Jury proceedings in Monroe County, Tennessee be suspended until a legally convened investigative Grand Jury has conducted a thorough investigation of this matter.

Signed on this 11th Day of February, 2010.



Mack Ellis, President
U.S. Grand Jury Institute, Inc.



Donald A. McDougall, Vice President
U.S. Grand Jury Institute, Inc.

U.S. Grand Jury Institute, Inc. is a 501 (C) (3) nonprofit corporation dually licensed and authorized to operate under the Laws of the State of Arkansas.

APPENDICES

A – F





Donald A. McDougall

January 12, 2010

Martha Cook
Monroe County Circuit Court Clerk
105 College Street, Suite 103
Madisonville, TN 37354

Dear Ms. Cook:

RE: Request for Information

I am a citizen of the State of Tennessee. I hereby request the following specific information be provided regarding the Monroe County Grand Jury:

- 1) What is the process of selecting the grand jury members in Monroe County and who is involved in that process?
- 2) How long has Mr. Gary Pettway been involved with the Monroe County Grand Jury both as a juror and as jury foreman?
- 3) What stipends past and present are being paid to Mr. Pettway?

I further request the release of ALL information in regards to the process of selecting the grand jury in Monroe County for the past 20 years to include the names of all judges, prosecutors and any personnel that have access to information about the grand jury in Monroe County.

I request this information be sent to the above address as soon as possible.

Sincerely,

Donald A. McDougall
Vice President, U.S. Grand Jury

Martha M. Cook

CLERK OF THE CRIMINAL, CIRCUIT AND SESSIONS, JUVENILE COURTS

105 College Street Suite 3
Monroe County Courthouse
Madisonville, Tennessee 37354

Circuit (423) 442-2396
Criminal (423) 442-5936
Sessions (423) 442-9537
Juvenile (423) 442-5631
Fax (423) 442-9538

January 21, 2010

Mr. Donald A McDougall

Re: Request for Information

Dear Sir:

Concerning your letter of January 14, 2010, I have attached and also attempted to answer your request for information.

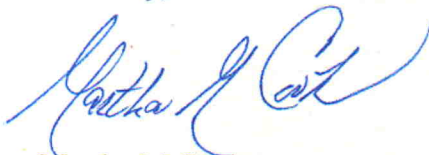
1. Process selection of Grand Jury/ I have attached copies of TCA 22-2-101 which describes the procedure. As to who is involved, I serve as jury coordinator and also a deputy clerk in my office assist me.

Two Grand Juries are impaneled in December and serve for a period of 1 year. They rotate months for appearing. Example: Panel 1 report in Jan. Panel 2 Feb. Panel 1 March, etc

2. Mr. Pettway has served as Grand Jury Foreman for appx 27 years.
3. Mr. Pettway receives \$15.00 per day for his service.

I think I have answered all the questions you requested.

Sincerely,



Martha M Cook

Exhibit B

Martha M. Cook

CLERK OF THE CRIMINAL, CIRCUIT AND SESSIONS, JUVENILE COURTS

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Monroe County Courthouse
Madisonville, Tennessee 37354

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Juvenile (423) 442-5631
Fax (423) 442-9538

January 21, 2010

Dear Sir:

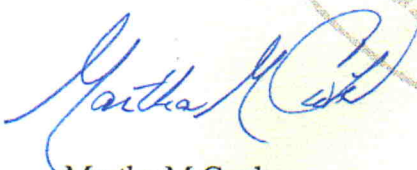
On Jan. 14, 2010, this Office received your open records request to inspect/receive copies of ALL INFORMATION in regards to the process of selecting the grand jury in Monroe County for the past 20 years to include the names of all judges, prosecutors and any personnel that have access to information about the grand jury in Monroe County. After reviewing the request, the Office is unable to provide you with either all or part of the requested records.

The basis for this denial is No such records exists.

The law which this denial is based on is TCA 10-7-503 (2) (B) (5)

If you have any other questions please contact me.

Sincerely,



Martha M Cook
Circuit Court Clerk

Exhibit C

10-7-503. Records open to public inspection — Schedule of reasonable charges — Costs. —

(a) (1) As used in this part and title [8](#), chapter 4, part 6, “public record or records” or “state record or records” means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(2) (A) All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days:

(i) Make the information available to the requestor;

(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or

(iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.

(C) [Deleted by code commission.]

(3) Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in [§ 10-7-505](#).

(4) This section shall not be construed as requiring a governmental entity or public official to sort through files to compile information; however, a person requesting the information shall be allowed to inspect the nonexempt records.

(5) This section shall not be construed as requiring a governmental entity or public official to create a record that does not exist; however, the redaction of confidential information from a public record or electronic database shall not constitute a new record.

(6) A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.

(7) (A) A records custodian may not require a written request or assess a charge to view a public record unless otherwise required by law; however, a records custodian may require a request for copies of public records to be in writing or that the request be made on a form developed by the office of open records counsel. The records custodian may also require any citizen making a request to view a public record or to make a copy of a public record to present a photo identification, if the person possesses a photo identification, issued by a governmental entity, that includes the person's address. If a person does not possess a photo identification, the records custodian may require other forms of identification acceptable to the records custodian.

Exhibit D



Donald A. McDougall

January 28, 2010

Martha Cook
Monroe County Circuit Court Clerk
105 College Street, Suite 103
Madisonville, TN 37354

Dear Ms. Cook:

RE: Request for Additional Information

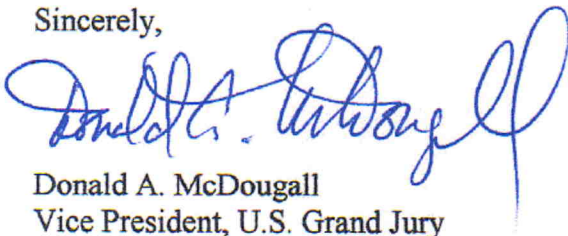
This is a follow up request for additional information to my original request for information that I sent to you on January 12, 2010. In your response letter to me dated January 21, 2010 you stated that "Mr. Pettway has served as Grand Jury Foreman for approximately 27 years". I have researched the Tennessee Code and the Rules for Criminal Procedure and I cannot find anything that would indicate that a Grand Jury Foreman or Juror can serve for that length of time.

My additional questions that I would like answered are:

1. By what or whose authority has Mr. Pettway served as Foreman of the Monroe County Grand Jury for the past 27 years?
2. Are the Jurors and Foreman for the Monroe County Grand Jury selected manually or by the automated means as discussed in TCA 22-2-301?

I request this information be sent to the above address as soon as possible. Thank you for your help in this matter.

Sincerely,



Donald A. McDougall
Vice President, U.S. Grand Jury

Martha M. Cook

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February 1, 2010

Mr. Donald A McDougall

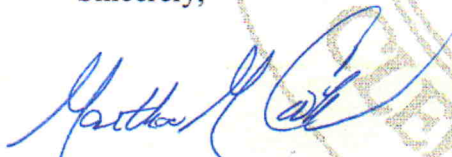
Re: Request for Information/ Additional

Dear Sir:

In your request for additional information received by this office on 2-02-10, the answers to your questions are as follows:

1. The foreperson of the Grand Jury is appointed by the judge of Criminal Court.
2. Our jury selection is totally automated.

Sincerely,



Martha M Cook
Circuit Court Clerk