

# Badger Flats Gazette

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April 20<sup>h</sup>, 2011

**FBI Sacramento**

4500 Orange Grove  
Sacramento, CA 95841

**FAXED/CERTIFIED MAIL**

Re: Request for Investigation of Grand Jury Tampering by Merced County Counsel James Fincher

Dear FBI,

You will find a series of letters and documents attached providing substantial evidence that indicate that Merced County Counsel James Fincher willfully tampered with a Merced County Grand Jury investigation of himself and other high ranking public officials and law enforcement agencies of Merced County.

As I told the FBI Duty Agent yesterday, it is a relatively simple matter of proving the jury tampering that I allege Merced County Counsel James Fincher committed based upon these three facts:

1. **March 16<sup>th</sup>, 2011:** A Grand Jury voted to have an investigation of Merced County Counsel James Fincher. The investigation was underway.
2. **On April 7<sup>th</sup>, 2011:** Merced County Counsel James Fincher provided erroneous legal advice to the Grand Jury investigating himself in violation of Penal codes 934-936 and advised a re-vote take place to terminate the investigation. The Grand Jury re-voted and the investigation was terminated against Merced County Counsel James Fincher.
3. James Fincher, a licensed attorney since 1998, and aware of his public duty not to act as a legal advisor to a Grand Jury investigation of himself according to Penal Code 934-936..... DID SO TO TAMPER WITH THE GRAND JURY VOTES IN ORDER TO TERMINATE THE INVESTIGATION AGAINST HIMSELF (AND OTHERS).

With that said, the next words from Detective Steve McGarrett, would be, "Book 'em, Danno." But, to provide some additional information to reach the same conclusion, please read on.

The facts briefly are:

1. **May 2010:** I filed a Merced County Grand Jury complaint against Merced DA Larry Morse, James Fincher, and others. You may go to BadgerFlats.com to view the complaint in full.
2. **March 16<sup>th</sup>, 2011:** I was contacted by Grand Juror Annette Tomsha and informed that the majority of the Grand Jurors voted to conduct a formal investigation. I was requested to be interviewed across several sessions. I agreed to such. The first interview was tentatively scheduled for March 24<sup>th</sup>, 2011, then cancelled, moved to March 31<sup>st</sup>, 2011, then cancelled, then moved to April 7<sup>th</sup>, 2011.
3. **April 7<sup>th</sup>, 2011:** I was contacted by Grand Juror Tomsha and told that Merced County Counsel, James Fincher, a subject of the complaint, had advised the Grand Jurors that in

his legal opinion, I had breached the confidentiality of the Grand Jury by speaking on a radio program in Monterey, California on April 2<sup>nd</sup>, 2011.

Tomsha said that Fincher advised the Grand Jury that because of such alleged breach of such alleged confidentiality, the jury should re-vote to terminate the investigation.

Tomsha told me that a re-vote was taken based upon such advice from Fincher and the investigation was terminated.

Tomsha told me that she would request Grand Jury Foreperson to send me a letter detailing that the investigation was terminated due to the advice of James Fincher saying that I had violated some confidentiality. As of April 20<sup>th</sup>, 2011, I have not received any such letter.

4. **April 7<sup>th</sup>-9<sup>th</sup>, 2011:** I conducted additional research to verify what I had already understood. There was no confidentiality that I owed to the Grand Jury that I could have breached.

I spoke to: Trinity County Former Grand Juror Foreperson, Dr. William Koch (530) 623-2872, California Grand Jurors Association President, Mr. Keath North (916) 471-6500, Grand Jury Expert, Mr. Peymon Mottahedeh (760) 868-5834, California attorneys, Mr. Gary Zerman (661) 259-2570 and Mr. Shawn Mills (831) 372-3000, and others.

These individuals verified that there was no confidentiality owed by me to the Grand Jury. They also stated in no uncertain terms that in their opinion, Merced County Counsel James Fincher could not render any legal opinions to a Grand Jury investigation he was the subject of. They all concurred that in their opinion, Fincher partook in tampering with the Grand Jury.

I then gathered various informational articles from the internet verifying that there was no confidentiality owed by me to the Grand Jury, especially in light of the fact that I was the complainant, and had never met with the Grand Jury while they were in session.

I also reviewed again CA Penal Codes 934-936 which prohibits the County Counsel, or DA Morse, from advising the Grand Jury in regards to an investigation they were the subjects of.

Thereafter, I sent the information in a series of email to Grand Jury Foreperson Barbara Ellington and Grand Juror Annette Tomsha. I also attached to the email audio excerpts of the two hour radio program of April 2<sup>nd</sup>, 2011 on which I spoke. If I recall correctly, I mentioned the Merced County Grand Jury investigation for a total sum of 3 minutes.

The email letters summarized my conversations with Grand Juror Tomsha concerning the information of her informing me that James Fincher had provided the grossly erroneous legal opinion which terminated the investigation of him and others.

NOTE: Grand Juror Tomsha during her conversation with me clearly sounded frightened (not of me) and frustrated. She told me that she knew that what Fincher was doing was wrong but there was nothing that she could do about it.

5. **April 11<sup>th</sup>, 2011:** I filed police report #11-18328 for the crime of jury tampering with the Merced Police Department. I was interviewed by Lieutenant Matt Williams for two (2)

hours and 45 minutes. I named James Fincher as the suspect, Grand Jurors Annette Tomsha and Barbara Ellington as the witnesses, and myself as the victim. Lieutenant Williams said that it was a Federal crime but would see what he could do in starting to conduct the basic investigation. Williams said that due to the easily discernible conflicts, that he would be unable to forward the report for investigation to the DA or the Attorney General's Office. Williams said he would be in contact with me. As of April 20<sup>th</sup>, 2011, I have not heard yet from Lieutenant Williams other than a brief email saying that he was reviewing the information.

6. **April 14<sup>th</sup> – 15<sup>th</sup>, 2011:** I sent additional emails requesting communications from the Grand Jury members. I also provided them with links to news articles concerning the Modoc County Grand Jury stating that public officials there had intimidated the jurors with threats of litigation. As of April 20<sup>th</sup>, 2011, I have not yet heard from the Grand Jury.
7. **April 19<sup>th</sup>, 2011 0930 hours:** I contacted the FBI office in Sacramento at approximately 0930 hours and spoke in detail of the alleged jury tampering by Merced County James Fincher with a female duty agent. I told the agent that I was requesting that FBI agents meet with me personally to assess my credibility. I also told the duty agent that I preferred not to interview with the FBI office in Fresno, due to one of the Los Banos law enforcement subjects of the Grand Jury investigation having working ties to such office.

I informed the agent I was willing to travel to Sacramento, which is actually closer and more convenient to me than Fresno. The FBI office of Modesto would be most preferred.

The duty agent said that she would “attempt” to get someone to call me back to arrange a meeting.

8. **April 19<sup>th</sup>, 2011 1630 hours:** I sent an email to approximately 1500 attorneys, citizens, and public officials in Merced, Stanislaus, and Fresno County with a copy going to the Grand Jury, which is attached, alleging that Merced County Counsel James Fincher tampered with the jurors of the Grand Jury Investigation against himself and others.
9. **April 20<sup>th</sup>, 2011 1318 & 1500hours:** I left messages with the Sacramento office of the FBI requesting a call back as a follow up to the conversation of April 19<sup>th</sup>, 2011.

You have been provided substantial evidence of public corruption by Merced County Counsel James Fincher and Merced County public officials involved with Grand Jury tampering of an investigation of them.

It mandates taking expedited action. I should not need to remind you of what the FBI's position on public corruption is, but I will.

Taken directly from the FBI website it is:

### ***Public Corruption***

*It's our top priority among criminal investigations—and for good reason.*

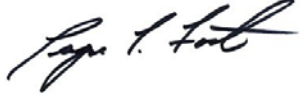
*Public corruption poses a fundamental threat to our national security and way of life. It impacts everything from how well our borders are secured and our neighborhoods protected...to verdicts handed down in courts...to the quality of our roads, schools, and other government services. And it takes a significant toll on our pocketbooks, wasting billions in tax dollars every year.*

*The FBI is singularly situated to combat this corruption, with the skills and capabilities to run complex undercover operations and surveillance.*

Public officials tampering with a grand jury investigation, though a heinous crime, is only the tip of the iceberg. Why they took such drastic action is an iceberg larger than the one that sunk the Titanic.

I stand ready to assist in any way. If you have any questions, please feel free to call.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gene Forte". The signature is written in a cursive, flowing style.

Gene Forte

(See attachments to FAX)

# Badger Flats Gazette

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April 9<sup>th</sup>, 2011

Merced County Grand Jury  
Grand Jury Foreperson Ellington & Grand Jurors  
P.O. Box 2034  
Merced, California 95340

Re: Tampering with Grand Jury Investigation by James Fincher

Dear Grand Juror Foreperson Ellington and Grand Jurors:

Please find enclosed copies of my email correspondence sent to you between April 7<sup>th</sup>, 2011 and April 8<sup>th</sup>, 2011 along with a CD containing the same emails and audio attachments for your convenience.

As you already know the correspondence addresses the clear violations of California Penal Codes by Merced County Counsel James Fincher. Fincher while knowing that he was the subject of the ongoing Grand Jury investigation willfully, maliciously, and intentionally rendered incorrect legal opinions alleging that I had somehow breached a confidentiality that I owed the Grand Jury that in fact did not, and does not exist.

The purpose of Fincher doing so was to persuade the Grand Jury to terminate the on-going investigation against him and other Merced County public officials that are his clients in his capacity as Merced County Counsel and who are also subjects of the investigation. It is illegal.

Another Machiavellian purpose for Fincher's action was to attempt to drive a wedge between myself and you the Grand Jury members. It is an age old trick of dividing and conquering by instilling distrust and discord. His intent was to mislead and manipulate you to do me harm for his benefit.

Fincher then planned to hide behind you knowing full well that you would be in the uncomfortable position of having to take the brunt of my reaction to his dirty tricks. Fincher's actions are unconscionable.

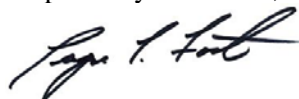
It speaks volumes in support of my allegations against him and his co-conspirators.

With the above said, I wish for you all to understand that I do not blame you for what Fincher tricked you into doing. I sincerely hope that none of you continue to fall prey to his ploys that have been revealed.

There should be no over rationalizations or generous justifications given for his egregious actions. There should be no forgiveness given him at my expense. Everyone is accountable under the law.

If you have any questions, please feel free to call.

Respectfully submitted,



Gene Forte

Enclosed: April 7-8, 2011 emails, Audio CD, Forte Correspondence

**Subject:** Grand Jury Meeting Confirmation

**From:** Gene Forte <geneforte@badgerflats.com>

**Date:** Thu, 07 Apr 2011 10:14:12 -0700

**To:** Grand Juror Tomsha <ambs\_2@yahoo.com>, grandjury@co.merced.ca.us

April 7th, 2011

Hello Grand Jury Foreperson Ellington & Grand Juror Tomsha,

I am awaiting confirmation of the time and place for our first interview.

I did schedule this evening tentatively.

Is there any word as to if it is going to take place this evening so that I can plan accordingly?

Thank you.

Gene Forte

209-894-5040

**Subject:** Bizarre Machinations/Grand Jury Tampering  
**From:** Gene Forte <geneforte@badgerflats.com>  
**Date:** Thu, 07 Apr 2011 19:56:16 -0700  
**To:** grandjury@co.merced.ca.us, Grand Juror Tomsha <ambs\_2@yahoo.com>  
**BCC:**

April 7th, 2011

Dear Grand Juror Foreperson Ellington and Grand Juror Tomsha,

I am more than shocked that I was contacted and informed this afternoon by Grand Juror Tomsha that the Grand Jury has now terminated the ongoing investigation of my complaint filed in May 2010 due to something that I allegedly did.

On March 16th, 2011, I was informed formally by Grand Juror Tomsha that the investigation was officially initiated by a majority of grand juror votes. Grand Juror Tomsha told me that due to such investigation, I was requested to attend at least 3-4 three hour sessions to help guide the jurors through the evidence.

The first interview was set for March 24th, 2010. As you know, that date was moved to March 31st, 2011, and then again moved tentatively to tonight, April 7th, 2011.

Further, I am appalled that the ongoing investigation was terminated due to my allegedly committing a misdemeanor offense of breaching the confidentiality of the Grand Jury that I have never once met with.

It is even more shocking that this alleged offense by me somehow took place during my interview on a radio program aired on KRXA540 in Monterey, California, on April 2nd, 2011. The program was Bob Oliver's "The Quantum Leap."

First, there is nothing confidential about anything I say about my complaint, or what I tell the Grand Jury, or that I announce to the world at large that an investigation of my complaint is underway. If you doubt that, then you should check Rule 6.4 (Attached).

Second, I never had any meeting with the Grand Jury. Therefore, there was nothing confidential that the Grand Jury told me that I could disclose that would be a breach of any confidentiality (if one did apply to me) because I never met with the Grand Jury.

Third, I was informed by Juror Tomsha that the termination of the investigation was suggested by Merced County Counsel James Fincher, who is a subject of the complaint under investigation. Fincher cannot advise the Grand Jury upon such termination (see Penal Code 934-936). Fincher should not even be anywhere near the Grand Jury deliberation during my complaint's investigation.

In lay terms, it is called tampering with a Grand Jury investigation by a subject of the complaint.

With the above said, you will find attached audio clips from the program which was broadcast on April 2nd, 2011 wherein the Merced County Grand Jury investigation was mentioned. I checked with Oliver who confirmed to me what I was already aware of. The program does not

reach any farther than Salinas, California. On the night it was broadcast, it was also put on the Internet. There were a total of 34 internet listeners.

I formally request that the Grand Jury tell me specifically what confidentiality rule applies to me, and what statements of mine allegedly breached such rule.

I am respectfully requesting that the Grand Jury grant me the interviews as they had originally decided to do and continue the ongoing investigation that they voted upon to initiate.

Candidly, something smells very, very rotten.....and I will not let any stone go unturned until I find out where that stink is coming from.

Actually, I don't think I need go any further than the subjects of the complaint tampering with an ongoing Grand Jury Investigation....which of course is a criminal offense for them..... and any and all Grand Jurors that participate and go along with it.

As of this moment I am formally notifying the Grand Jury and will be announcing to the world at large that Merced County James Fincher has tampered with an ongoing Grand Jury Investigation.

Thank you.

Gene Forte

209-894-5040

PS: You will find the flyer that had been spread out through Merced County in May 2010 and which you were provided a copy of. Do you see where I said that this was going to be a transparent investigation and a virtual open book? Do you see where it pointed out PC 934-936 which informed you that Fincher could not be involved in giving opinions?

<b>One Hour nineteen Minutes into Program WS504042.WMA</b>	<b>Content-Type:</b> audio/x-ms-wma <b>Content-Encoding:</b> base64
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— One Hour twelve Minutes into Show WS504042.WMA —

<b>One Hour twelve Minutes into Show WS504042.WMA</b>	<b>Content-Type:</b> audio/x-ms-wma <b>Content-Encoding:</b> base64
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— Rule 6.4 Secrecy and Confidentiality.pdf —

<b>Rule 6.4 Secrecy and Confidentiality.pdf</b>	<b>Content-Type:</b> application/pdf <b>Content-Encoding:</b> base64
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—LB CONFIDENTIAL Grand Jury Complaint 5.5 x 8.pdf

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**LB CONFIDENTIAL Grand Jury Complaint 5.5 x 8.pdf**

**Content-Type:** application/pdf

**Content-Encoding:** base64

Rule 6.4. Secrecy and confidentiality of grand jury proceedings.

(a) Who May be Present at Grand Jury Sessions. The grand jury may, at all reasonable times, request the presence and advice of the district judge but unless such advice is asked, the district judge shall not be present during any session of the grand jury after it has been impaneled. No other person shall be permitted to be present during the sessions of the grand jury except:

(1) Jurors of the grand jury.

(2) The prosecuting attorney of the county in which the grand jury is sitting, or a designated deputy or specially appointed deputy.

(3) A witness physically present before the grand jury and under questioning and such person requested by the prosecuting attorney as authorized by section 19-3023, Idaho Code.

(4) The person designated by the district judge or the presiding juror to report the proceedings.

(5) An interpreter designated by the district judge or presiding juror and sworn to correctly interpret the proceedings and sworn to secrecy.

(b) Presence of Persons During Jury Deliberations Prohibited. No person other than the acting grand jurors shall be permitted to be present during the deliberations of the grand jury.

(c) Secrecy of Proceedings and Disclosure. Every member of the grand jury must keep secret whatever was said or done in the grand jury proceedings and which manner each grand juror may have voted on a matter before them; but a grand juror may be required by the district judge to disclose matters occurring before the grand jury which may constitute grounds for dismissal of an indictment or grounds for a challenge to a juror or the array of jurors. No other person present in a grand jury proceeding shall disclose to any other person what was said or done in the proceeding, except by order of any court for good cause shown.

(d) Disclosure of Indictment. The court may seal the indictment and while sealed, no person shall disclose the finding of the indictment.

(Adopted March 30, 1994, effective July 1, 1994.)



# BADGER FLATS GAZETTE



## L.B. CONFIDENTIAL

By Gene Forte

### Is Your Town Just Another L.B. CONFIDENTIAL?

I would be willing to bet it is! I'm Gene Forte, this is my story, my **Grand Jury**

**Complaint** (pg. 2), and perhaps yours.

The Badger Flats Gazette's **L.B. CONFIDENTIAL** issue tells all. Crooked mayors, crooked city councilmen, crooked cops, crooked district attorneys, crooked judges, crooked city attorneys, and crooked local newspapers cover up the crookedness. Their crookedness is not a unique phenomenon to Los Banos/Merced County. These S.O.B.s are everywhere!

Crooked public officials are supported by crooked developers, crooked businessmen, and crooked locals that have influence over votes. The votes are cast by wannabe-like-them butt kissers... holier than thou hypocrites that say peace be with you and wave when you're dropping your kids off at school, but, they'll all treat you like a leper if you come under attack by crooked public officials you're standing up to.

They'll go against the American principles of justice, and, in a most un-Christian-like way, stand silent while watching crooked public officials assault you. Hell, the wannabes will look for a cross, hammer, and nails to help 'em.

Do you suspect that the newspaper is in the pocket of a crooked city hall but don't have the evidence to prove it? Do friends or relatives continually tell you you're crazy for fighting back? Do they trivialize what happened to you? Want them to eat their words? Buy a Badger at [www.badgerflats.com](http://www.badgerflats.com) and let 'em have it.

The Badger Flats Gazette can ward off an attack by crooked public officials. Throw it in their faces. Do to them what they do to others...and really screw 'em. It's a leverage tool. Let 'em know that you know this little ol' Badger story...and you're wise to their tricks. You've got their number and **The Badger's, (209) 829-1116.**

Within Badgers are actual police reports. When compared to audios of my arrest, they

prove cops lied through their teeth. Deputies attacked me and slammed my head into a door when handcuffed. District Attorney Morse filed retaliatory criminal charges against me for his partner in crime, Sheriff "Deputy Dawg" Mark Pazin. Why? Read **L.B. CONFIDENTIAL**, and then decide for yourself.



The police brutalization of me doesn't mean I'm losing the battle against these crooked dirt bags—quite the opposite. They've taken drastic steps that are now coming back to haunt them.



The **Death Threat** (pg. 3), covered up by LBPD Chief Gary "The Fixer" Brizzee, delivered by a punk kid saying he did it "out of respect and love for my teacher, mayor and close family friend Tommy Jones" are the starting point of my Grand Jury

Complaint. I believe Jones got the kid to do it.

There's proof positive that African American Mayor Tommy Jones, and his minion African American reporter, Corey Pride of the Los Banos Enterprise, accuses anyone that has evidence of crimes by Jones of being a racist. Don't be affronted as I indicate who's white and who's black. Jones threw the race card at the wrong guy when I busted him publicly with the FPPC.

My best man at my wedding to my Chinese American wife was Clinton Galloway, an African American. The moronic Jones told Galloway that he "knew for a fact that I was a dangerous member of the Ku Klux Klan." No way, Jose!

Crooked officials use tactics right out of Hitler's Youth movement to capture juvenile minds for future votes. Want to pop the bubble of the socially pompous who believe you're lower than them? Worth more than a 1,000 hours with an attorney who'll sell you out, or ten shots of tequila to ease your pain...Watch, listen, and read how this Badger is tearing some jackass crooked officials a new one.

Buy **L.B. CONFIDENTIAL** (30 pgs.), 8.5 x 11, full color.

**MERCED COUNTY GRAND JURY COMPLAINT**

**Complainant: Gene Forte**

**SUBJECTS**

No. \_\_\_\_\_ (Office Use Only)

<u>LOS BANOS CITY OFFICIALS</u>	<u>MERCED COUNTY OFFICIALS</u>	<u>PRIVATE ACTOR ACCOMPLICES</u>
<p><b>Mayor Tommy Jones</b></p> <p><b>LB Police Chief Gary Brizzee</b></p> <p><b>LBPD Officers:</b> ex-Chief Knapp, Det. Townsley, Westbrook, Torongo, Parker, Llanez, Dispatcher Strauch.</p> <p><b>LB City Council Members:</b> Joe Sousa, Michael Villalta, Manuel Faria, Elizabeth Stone.</p>	<p><b>District Attorney Larry Morse</b> <b>Deputy DA Alan Turner</b></p> <p><b>Merced County Sheriff Mark Pazin</b> <b>Deputies:</b> Picinich, Leuchner, Perrino.</p> <p><b>County Supervisor Jerry O'Banion</b> <b>County Counsel James Fincher</b></p> <p><b>Merced Superior Court Judge:</b> Frank Dougherty (retired)</p> <p><b>Assist. Attorney General D. Gillette</b></p>	<p><b>The Los Banos Enterprise</b> <b>Merced Sun-Star</b> Reporters: Gene Lieb, Corey Pride. <b>Fresno Catholic Diocese:</b> Connie McGhee, OLF school principal, Sexton, superintendent, and Priest Bob Gamel. <b>Benjamin Ratliff</b> <b>Anthony Donaldson Bates</b> <b>James Pico Padron</b> <b>Merced Defense Associates</b></p>

**DEATH THREAT COVER UP**

**FOR MAYOR TOMMY JONES  
AGAINST GENE FORTE,  
REPORTER FOR THE BADGER FLATS GAZETTE.**

**FALSE ARREST, POLICE BRUTALITY, AND RETALIATORY PROSECUTION OF FORTE.**

**OVERVIEW:** The presentation of evidence for this complaint, which will be frequently supplemented, is best described as the application of two common adages, "the devil is in the details" and "eating an elephant one bite at a time." The complaint will be "transparent" and a "virtual open book" to the public. The Badger Flats Gazette is encouraging additional evidence and support from citizens who have experienced, the "mysteries" of Public Official Corruption, which are, *Officials Commit Crimes, Officials Cover-up Other Officials' Crimes, Newspapers Don't Report About It. Amen!*

The public will be alerted that Morse, Fincher, the California Attorney General's Office, and a disqualified judge of the Merced Superior Court are also specious advisors to this Grand Jury complaint *against themselves*. (That's a no-no according to Penal Code §934-936.)



Evidence provided will lead to the clear conclusion that, for the public's safety, a criminal Grand Jury must be assembled to issue indictments. The above named subjects punished Forte for his writings exposing public corruption. They punished him by the concealment of death threats, false arrests, police brutality, and retaliatory prosecutions against Forte for their own Machiavellian motives. An independent prosecutor is required to conduct a thorough investigation. Forte has no doubt that a legitimate law enforcement investigation will reveal that Mayor Tommy Jones (also a Los Banos High School teacher), influenced and/or directed his student, Anthony Donaldson Bates, to send the death threats. It's a trick lifted from a Crimes for Dummies book.

**HOW IT WAS DONE:** Falsified police reports, honest services fraud, media blackout.

**EVIDENCE:** Police Reports, Audio/Video Recordings, court documents, legal opinions, and eye-witness testimony.

**BRIEF BACKGROUND:** Forte is an investigative reporter for the Badger Flats Gazette, which focuses on public official corruption. Forte investigated and filed the complaint with the Fair Political Practices Commission (FPPC) against Jones that found Jones voted on two development matters of Ranchwood Homes Developer, Mr. Greg Hostetler, which "had a foreseeable and material economic effect on Jones' economic interests." In plain English, it's called taking a bribe.

Forte published stories about Jones' arrest for possession of crack cocaine when Jones was a City Councilman in 1999 and the bizarre non-prosecution of Jones by ex-DA/embezzler Gordon Spencer. Forte spearheaded a Recall of Jones in 2008. Forte slammed shut the till of the Underground Storage Tank Fund on the sticky fingers of county and private remediation firms in cahoots with each other. Forte is hated with a passion by corrupt public officials and the newspapers that cover for them.

	<h2 style="color: red;">DEATH THREAT MADE</h2> <p style="color: red;">“out of respect and love for my teacher, mayor, and close family friend Tommy Jones”....</p> <p><b>Preface:</b> Below is the threat that LBPD Commander Gary Brizzee covered up and was rewarded by being appointed LBPD Chief, that City Councilmen haven't said a word about, and that the Los Banos Enterprise hasn't reported upon....it is now the starting point subject of my complaint sent to <b>The Merced County Grand Jury</b>. Will they do anything?</p>	
<p>Donaldson, confessed, but not arrested.</p>		<p>1999 Jones' arrest mug shot for drug possession</p>

**California Penal Code 422.** Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person .... even if there is no intent of actually carrying it out .... is so unequivocal, unconditional, immediate, and specific as to convey .... a gravity of purpose and an immediate prospect of execution of the threat .... and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county...or state prison. (PC 422 annotated)

*(Actual threat with typos, emphasis added)*

I swear on my life and my honor if i see Mr. Forte in the streets i will conduct myself in a proper manner and that proper manner will be in such a manner that i knock Mr. Forte back into the past life that he spoke of in this council meeting. Mr. Forte you are lucky I was not at this meeting because **out of respect and love for my teacher, mayor, and close family friend Tommy Jones**, I would knock you so hard you would become color blind and lose your ability to speak so you can never again refer to someone in such a racial manner...

Mr. Forte I swear if I ever catch you in the streets, no matter where it might be I will ask you your name, confirm your identity, and proceed, without further warning, to beat the living hell out of you with my bare hands until my fist are bruised and red from my own blood from hitting you so hard.

I do strongly believe in the first amendment which grants all of us as Americans the freedom of speech which allows us to say what want when we want as long as it is in no way threatening to national security but I also believe in what we call in the streets a trial by fury and if I ever see you in the streets that is what you will be granted, and as expected I will be tried for my "wrong doings" in of court and will be sentenced to jail time for the amount of damage I inflict upon you, but I will know I have served you justice for everyone who could not sleep on the night this council meeting took place, everyone who was present at this council meeting and had to hear it, and every young child who watched this on the community channel and was caught in a maze of confusion as our current mayor was called a "lying \*\*\*\*\*".

I don't know if you Mr. Forte are a man of God but I do know for a fact that **if Tommy Jones was not the Christian he is, and is ignorant as you make him out to be, he would have leaped from his chair and served you the beating you diserved**. You have some nerve. I am not a the type of person who will make threats over the internet knowing you will never read them, or knowing I will never see you to keep up with the words I have typed in this comment box... no that's not the type of person I am. instead I hope everyday that I see you because my fists are burning to meet your knose, jaw, eyes, forehead, and cheek bones, and I hope for your sake that you read this or someone reveals this to you so you can prepare and be ready for the fury I will unleash upon you on sight. I put my life on it. No matter where it may be... no matter who you are with... no matter who is present...

I give you my word I will keep up with everything I have stated on this post and you will know how I feel about what has been said. After which I will turn myself in for what I have done and do my time with a smile on my face.

Your fellow Los Banos Citizen,  
Anthony Donaldson

#### HELP BADGER 'EM!

**Contact:** Gene at 209-829-1116, or go to [www.badgerflats.com](http://www.badgerflats.com). Purchase merchandise, buy Badgers, or paper, every little bit helps. Volunteers and supporters needed to spread flyers, arrange Badger Den meetings, etc.

**DISCLAIMER:** The views, opinions, and commentary expressed in the *Badger Flats Gazette* are solely those of Gene Forte and do not reflect the views and opinions of Badger Flats, LLC. Copyright 2010. All rights reserved. Ver. 1.01

***BADGER 'EM !***

For the past four years, The Badger Flats Gazette has been inflicting some serious damage upon corrupt public officials in Merced County (sometimes incorrectly referred to as "The Good ol' Boys"). There is nothing good about these scurrilous vultures. Their acts of openly defying the principles of truth, justice, and the American way defile the death of every soldier that stood for our freedom.



If every corrupt public official were to be convicted in a court of law and either executed (as done in China), or sent to the front lines as human shields in our war against terrorism, public official corruption would definitely be deterred! Our country is in the trouble it is because of such individuals. However, I would also be the first to say that not all public officials, judges, or attorneys are corrupt. Unfortunately, out of their fear of reprisal, not even the good ones would stand up against those who are corrupt.

When everyone stands up, no one has to hide. That's why it's important to spread the word and stand behind me. I'll be your Badger shield while we Badger 'em!

I have stood firm on the front lines and not backed down, deciding that making money was far less important than seeking justice. What I have dared to do has come at a high personal price. But, when I look at my children who are all outstanding academically, and I see how kind and considerate they are, both my wife and I know that we have done the right thing. It is for their future that I have waged this battle. It was for them that I suffered a heart attack in a courtroom and will not back down from the public corruption that polls say 85% of Americans know exists.



Los Banos Police Department with then Commander (now Chief) Gary "The Fixer" Brizzee (center) at the helm, forcing Forte away from City Hall to prevent him from speaking at the City Council Meeting.

Why? They knew Forte was going to play recordings of ex-Chief Knapp and others admitting no investigation was conducted regarding Jones' involvement in the death threats against Forte.

What I ask of citizens is to help me keep the pressure up on corrupt public officials that I have cornered in a much larger way. The Grand Jury complaint that I have filed is going to be supplemented with evidence on interactive CD's which will contain audios, videos, and documents. You will be able to see and hear the evidence presented to the Grand Jury which will be told in an interesting, provocative way.

Support my efforts by going to [BadgerFlats.com](http://BadgerFlats.com) and making a taxable contribution by purchasing the Grand Jury Complaint CD's, t-shirts, hats, bumper stickers, or a box of paper for The Badger. It takes money to continue the fight. I've proven the seriousness of my commitment and the corrupt public officials' fear of me by putting my life on the line.

Citizens are encouraged to call me at 209-829-1116 with their own stories and evidence of public official mistreatment, but, they must understand that the first focus is upon the overwhelming evidence I have that starts with me. My evidence cannot be attacked, it is rock solid proof. And, it is the Badger's weapon. In the truest sense, I would like the bloodless war cry to be, Badger 'em!

**[WWW.BADGERFLATS.COM](http://WWW.BADGERFLATS.COM)**

***Please support the Badger and tell your family, friends, and neighbors.***

***Help Us Ream 'em By Getting Us a Box of Paper!***

**Subject:** Grand Jury Tampering/PC 934-936.5

**From:** Gene Forte <geneforte@badgerflats.com>

**Date:** Thu, 07 Apr 2011 22:19:19 -0700

**To:** grandjury@co.merced.ca.us, Grand Juror Tomsha <ambs\_2@yahoo.com>

**BCC:**

April 7th, 2011

Dear Grand Juror Foreperson Ellington & Grand Juror Tomsha,

You will find attached the Penal Codes that Merced County Counsel James Fincher clearly violated in giving his opinion that the Grand Jury should vote to terminate the Grand Jury investigation that he was a subject of. You will also see that the Grand Jury should have already availed itself to PC 936.5.

I am trying rationalize as to how it was voted upon by the majority of the Grand Jurors to investigate the complaint....and how now there was a majority of votes to terminate the investigation based upon some alleged breach of confidentiality by me based upon the legal opinion of the subject of the complaint James Fincher.

I also want to correct a statement I made earlier to Grand Juror Tomsha. After double checking with two Grand Jury experts and a former Grand Jury foreperson I was informed that I could tell anyone, anything I wanted about what Grand Jurors told me.

I incorrectly stated to Grand Juror Tomsha that I could not tell people what Grand Jurors told me.

The confidentiality issue is a one way street for Grand Jurors only. It does not apply to the complainant (me) or witnesses.

With that said, Grand Juror Tomsha had told me earlier that she would be sending me a copy of a letter that she was going to email this evening to Grand Jury Foreperson Ellington.

The letter was to specify that the on-going Grand Jury investigation was voted upon to be terminated due to my alleged breach of confidentiality and that the legal opinion that I did so, and to terminate the investigation due to such, was given by Merced County Counsel James Fincher.

I would very much appreciate a prompt response to this very serious matter.

Thank you again for all of your efforts and hopefully all of this will be addressed....and there will be no further obstruction of the investigation by the subjects of the complaint.

Gene Forte

<b>PC 934-936.5.pdf</b>	<b>Content-Type:</b> application/pdf
	<b>Content-Encoding:</b> base64

CALIFORNIA CODES  
**PENAL CODE**  
SECTION 934-936.5

**934.** (a) The grand jury may, at all times, request the advice of the court, or the judge thereof, the district attorney, the county counsel, or the Attorney General. Unless advice is requested, the judge of the court, or county counsel as to civil matters, shall not be present during the sessions of the grand jury.

(b) The Attorney General may grant or deny a request for advice from the grand jury. If the Attorney General grants a request for advice from the grand jury, the Attorney General shall fulfill that request within existing financial and staffing resources.

935. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury, and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against or involving the district attorney, or assistant district attorney, or deputy district attorney, or anyone employed by or connected with the office of the district attorney, is being investigated by the grand jury, such district attorney, or assistant district attorney, or deputy district attorney, or all or anyone or more of them, shall not be allowed to be present before such grand jury when such charge is being investigated, in an official capacity but only as a witness, and he shall only be present while a witness and after his appearance as such witness shall leave the place where the grand jury is holding its session.

936. When requested so to do by the grand jury of any county, the Attorney General may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence in such investigation to such grand jury.

The services of such special counsel and special investigators shall be a county charge of such county.

936.5. (a) When requested to do so by the grand jury of any county, the presiding judge of the superior court may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence of the investigation to the grand jury.

(b) Prior to the appointment, the presiding judge shall conduct an evidentiary hearing and find that a conflict exists that would prevent the local district attorney, the county counsel, and the Attorney General from performing such investigation. Notice of the hearing shall be given to each of them unless he or she is a subject of the investigation. The finding of the presiding judge may be appealed by the district attorney, the county counsel, or the

Attorney General. The order shall be stayed pending the appeal made under this section.

(c) The authority to appoint is contingent upon the certification by the auditor-comptroller of the county, that the grand jury has funds appropriated to it sufficient to compensate the special counsel and investigator for services rendered pursuant to the court order. In the absence of a certification the court has no authority to appoint. In the event the county board of supervisors or a member thereof is under investigation, the county has an obligation to appropriate the necessary funds.

**Subject:** Grand Jury Tampering by Subjects Under Investigation & Correspondence of a Mr. John Bennett  
**From:** Gene Forte <geneforte@badgerflats.com>  
**Date:** Fri, 08 Apr 2011 04:53:37 -0700  
**To:** grandjury@co.merced.ca.us, Grand Juror Tomsha <ambs\_2@yahoo.com>  
**CC:** eileenforte@badgerflats.com  
**BCC:**

April 8th, 2011

re: Grand Jury Tampering by Merced County Counsel James Fincher, subject under investigation

Dear Merced County Grand Juror Foreperson Ellington & Grand Juror Tomsha,

Upon awakening this morning I checked my voice messages to find that I had received a voice message at 11:32PM from a Mr. Bob Oliver of the radio program "The Quantum Leap". That was the program that I was interviewed on April 2nd, 2011.

Oliver informed me that he had received a package of information set on his motorcycle from a homeless person by the name of Mr. John Bennett to be delivered to me. Oliver was not able to read the entire contents of what the package contained due to a very limited recording time on my voice mail.

Oliver said that apparently Bennett, when not being able to fax the information to me somehow went on line and obtained a Merced County Grand Jury complaint form, filled it out, and then sent the information to you asking that you give it to me prior to my interview. Bennett was apparently hoping that information he had about potential public official corruption in Monterey County and about DA Dean Flippo would be useful to me. It may, however, I already have a trunk load myself.

Due to it being 4:01AM I am unable to contact Oliver and ask that he provide me more details. Apparently, this is the written information that Juror Tomsha referred to that she said she was unable to share with me that was received by the Grand Jury.

With that said, let me make this very clear. The actions of Bennett have nothing to do with me. It does not impugn me in any way.

Bennett's decision to send such information to you does not even remotely constitute by any stretch of the imagination, or imply some type of wrong doing by me that would necessitate, or permit, James Fincher, the subject of the complaint, giving a legal opinion to the Grand Jury that it did. It is beyond the mere grasping at straws by a desperate subject under investigation opining a legal opinion that I did something wrong, and that the investigation of the Merced County Grand Jury should be terminated.

It is a Penal Code violation of obstructing justice and tampering with a Grand Jury investigation by a subject of the investigation. I can't say it enough times, and in enough different ways so as to drive that point home to the Grand Jury.

For the record, if it is my firm belief from the evidence that I possess that public officials from Monterey County have involved themselves in a conspiracy to do me harm with Merced County officials that are subjects of the Merced County investigation. It is certainly in the domain of the Merced County Grand Jury to refer evidence of wrongdoings of other public officials in other counties to other Grand juries in such counties for their own investigation if it is discovered through the Merced County investigation.

Such statement by me is not a conjecture on my part, but it is legally well established that it is within the capability of the Grand Jury to do such. It is in fact required of the Grand jury to do such. To do otherwise would be putting the public at risk and defeating the "watchdog" duties of the Grand Jury.

The bottom line is that the subject of the complaint, Merced County Counsel Mr. James Fincher, in collusion with other subjects of the complaint, who by law cannot be involved in anything concerning my Grand Jury investigation, improperly, and in violation of PC 934-936, obstructed an on-going investigation.

I request this matter to be immediately rectified and interviews scheduled with me.

I also request that law enforcement be notified and the public be made aware of this illegal and Machiavellian attempt by the subject of the complaint, Mr. James Fincher, so that the other subjects under investigation are sent a strong message that such illegal activity will be dealt with swiftly and severely..... the investigation will no longer be tampered with.....and for the protection of family and self.

I look forward to communications on this matter as soon as possible.

Thank you.

Gene Forte

209-894-5040

**Subject:** Additional Information Concerning Improper and Incorrect Legal Opinion of Subject Under Investigation: James Fincher  
**From:** Gene Forte <geneforte@badgerflats.com>  
**Date:** Fri, 08 Apr 2011 09:34:39 -0700  
**To:** grandjury@co.merced.ca.us, Grand Juror Tomsha <ambs\_2@yahoo.com>  
**CC:** eileenforte@badgerflats.com  
**BCC:**

Dear Grand Juror Foreperson Ellington and Grand Juror Tomsha,

You will find attached some brief articles that if read disclose the totally inaccurate legal opinion given you by James Fincher who is a subject of the investigation.

Again, a real stretch would to even classify me as a "witness" per se, in that I am the actual complainant and victim of the investigation.

With that said, you will still find from a reading of the articles that there is nothing confidential that I disclosed and that I was prohibited from talking about.

Some excerpts:

"Although the First Amendment allows grand jury witnesses – if one can reach them – to talk to the media about their testimony, recent court decisions restrict the scope of what they can disclose under state law. In September, a California appeals court upheld a warning to witnesses not to divulge anything they learn as a result of testifying before a grand jury. A federal appeals court validated a similar secrecy rule in Colorado last year."

Federal rules and the majority of states, either expressly or impliedly, allow grand jury witnesses to disclose what transpired when they testified.

"There are no restrictions on witnesses before the grand jury," said media attorney Kevin T. Baine of Williams & Connolly in Washington, D.C. "If anybody is called as a witness to the grand jury – whether as a witness to a crime, or a reporter, or someone suspected of a crime – that person is completely free to walk out of the grand jury room, stand in front of a TV camera and recite in detail everything that happened in that grand jury room."

In one vein I would apologize for the number of emails at this time, but on the other I have nothing to apologize for. I am pretty upset that I am having to do all of this additional work to correct what is clearly an illegal act by Fincher. It is all due to James Fincher trying to obstruct a Grand Jury investigation.

Thank you.

Gene Forte

<b>What Reporters can report upon Grand Juries.pdf</b>	<b>Content-Type:</b> application/pdf <b>Content-Encoding:</b> base64
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— Interviewing Witnesses Grand Juries.pdf —

<b>Interviewing Witnesses Grand Juries.pdf</b>	<b>Content-Type:</b> application/pdf <b>Content-Encoding:</b> base64
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## What can reporters report about grand jury testimony?

At a time when reporters are being subpoenaed to appear before grand juries in at least five cases, including one grand jury investigating who leaked the name of CIA operative Valerie Plame to the press, it warrants examining what, if anything, journalists can report after they've testified.

"The issue right now is ripe, because we have . . . reporters [possibly] going to jail for refusing to testify before the grand jury," said media lawyer Gregg D. Thomas of Holland & Knight, who represented a reporter in the 1990 *Butterworth v. Smith* case.

In *Butterworth*, the U.S. Supreme Court ruled that journalists — like any other witnesses — have a First Amendment right to publish the details of their grand jury testimony once the investigation has ended.

Newspaper reporter Michael Smith was summoned to testify before a grand jury after he wrote articles about alleged wrongdoing by the prosecutor's office and sheriff's department of Charlotte County, Fla. Smith was warned that Florida law prohibited grand jury witnesses from ever disclosing their testimony in any way, and that a violation could result in criminal punishment.

Smith planned to write a story and perhaps a book about the investigation, including his own testimony and experiences before the grand jury. He sued in federal court to win a declaration that the state law prohibiting his disclosure unconstitutionally restricted his freedom of speech. He also sought an order preventing the state from prosecuting him.

The federal district court threw out his case, ruling that a total and permanent ban on disclosure of witness testimony was necessary to ensure the proper functioning of the grand jury. The U.S. Court of Appeals in Atlanta (11th Cir.) reversed. The U.S. Supreme Court affirmed the appeals court, agreeing that the reasons for preserving grand jury secrecy did not warrant prohibiting witnesses from ever disclosing their testimony.

"[T]he interests advanced by the portion of the Florida statute [preventing witnesses from revealing their own testimony] . . . are not sufficient to overcome [Smith's] First Amendment right to make a truthful statement of information he acquired on his own," the Supreme Court concluded.

Although the high court specified that witnesses are free to talk once the grand jury has ended its investigation, Thomas said he believes it would have ruled the same way if the grand jury in his client's case had still been in session. He pointed out that the rule governing federal grand jury secrecy — Rule 6(e) — places no restriction on witnesses.

"Which means that if you're a witness before a federal grand jury, and you're not related to the government — you're just sort of a lay witness — you can immediately leave and discuss what happened before the grand jury," he said.

The Supreme Court also limited its holding to the disclosure of witness “testimony,” declining to decide whether witnesses may talk about their “experience” before the grand jury. But Thomas said he thinks such speech would be protected.

“I absolutely think the First Amendment protects that — that is, what it felt like being before a grand jury, what the questions were that were asked by the grand jury. I think the First Amendment protects that sort of compelled interaction,” he said. “You’re not there on your own, you’re not there as a volunteer, you’re there because the government says you have to be there. And I really think you have the ability to talk about or discuss what your experience was before the grand jury.”

At least one court, however, has narrowly interpreted *Butterworth* to permit grand jury witnesses to divulge only what they knew *before* they testified.

In 2003, the U.S. Court of Appeals in Denver (10th Cir.) ruled that a housekeeper for the parents of murdered child JonBenet Ramsey could not disclose anything she learned through testifying before the grand jury in a book she intended to write. In upholding a Colorado admonition to all grand jurors to keep their testimony secret “until and unless” an indictment issued, the court cited the importance of preserving the state’s interest in grand jury secrecy. (*Hoffmann-Pugh v. Keenan*)

“[W]e are convinced a line should be drawn between information the witness possessed prior to becoming a witness and information the witness gained through her actual participation in the grand jury process,” the court said. The U.S. Supreme Court in January declined to review the decision.

Thomas said the issue of reporters disclosing their grand jury testimony could arise in the current climate, noting that a few journalists actually have testified before the Plame grand jury.

“It would be interesting to see what some of those reporters had to say,” he said.

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[\[Front page\]](#)

## Interviewing witnesses

Federal rules and the majority of states, either expressly or impliedly, allow grand jury witnesses to disclose what transpired when they testified.

“There are no restrictions on witnesses before the grand jury,” said media attorney Kevin T. Baine of Williams & Connolly in Washington, D.C. “If anybody is called as a witness to the grand jury — whether as a witness to a crime, or a reporter, or someone suspected of a crime — that person is completely free to walk out of the grand jury room, stand in front of a TV camera and recite in detail everything that happened in that grand jury room.”

In fact, President Clinton appeared on national television on the same day he testified before the grand jury and revealed his status as a witness. “I’m not saying it’s inconceivable that a judge could ever gag a witness, but I’m not aware of it ever happening,” Baine said.

But in September, the California Court of Appeal in Santa Clara County upheld a warning given to grand jury witnesses not to disclose their testimony, or anything they learned during their appearance before the grand jury, until the transcript is made public.

The case arose after a newspaper unsuccessfully tried to interview grand jury witnesses in connection with the criminal investigation of a local judge. The *San Jose Mercury News* complained that a witness declined to talk to one of its reporters after a prosecutor told the reporter, within earshot of the witness, that anyone who spoke publicly about his testimony could be thrown in jail. Another prospective witness refused to be interviewed without the district attorney’s permission. The appeals court ruled that the admonition read to all witnesses was not an unconstitutional “prior restraint” on the press. (*San Jose Mercury News, Inc. v. Criminal Grand Jury of Santa Clara County*)

The ruling appears to conflict with a 1990 U.S. Supreme Court case, *Butterworth v. Smith* (see sidebar, page 5), which holds that all grand jury witnesses have a First Amendment right to disclose the contents of their testimony, at least once the grand jury has concluded its activities. But because the court in *San Jose Mercury News* limited its discussion to the single issue of prior restraint, it expressly declined to analyze the constitutionality of the warning under *Butterworth*.

One thing is certain: witnesses are completely free to discuss anything they knew prior to testifying before the grand jury. That doesn’t mean they will be willing to do so, however — especially when a prosecutor may threaten to throw them in jail for talking, *San Jose Mercury News* lawyer James Chadwick noted.

## Obtaining materials

The general rule of secrecy also applies to materials used in the course of grand jury proceedings, and even ancillary proceedings. It applies to civil — or watchdog — grand juries as well as criminal ones.

As previously noted, Rule 6(e)(6) of the Federal Rules of Criminal Procedure provides that records, orders and subpoenas pertaining to grand jury proceedings are kept sealed from the public “to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.”

The U.S. Court of Appeals in Philadelphia (3rd Cir.) held in 1997 that there is no presumptive First Amendment or common law right of access to court documents involving materials presented before a grand jury. The court in that case determined that a sentencing memorandum that mentioned the names of grand jury witnesses, in apparent violation of the federal rules, and other pertinent documents were sufficiently related to the grand jury proceedings to justify sealing them. (*United States v. Smith*)

The same court later relied on *Smith* to deny a newspaper’s request to unseal court documents related to an apparent contempt proceeding against federal prosecutors for leaking secret grand jury information to the media. (*In re Newark Morning Ledger Co.*)

Grand juries that act as government watchdogs often issue to a court reports of their findings and recommendations, which then become public records. In 1988, the Supreme Court of California concluded that a grand jury could not disclose as part of its report “raw evidentiary materials,” including hearing transcripts and interviews conducted by the prosecutor, gathered during a watchdog investigation that failed to yield any indictments.

Numerous media organizations had challenged a lower court judge’s refusal to file the report and his sealing of the evidentiary materials, arguing such actions violated the public’s right to scrutinize public affairs. But the state high court, emphasizing the importance of grand jury secrecy, upheld the trial judge’s actions. (*McClatchy Newspapers v. Superior Court*)

### Ancillary proceedings

Under federal rules, not only are grand jury proceedings themselves closed to the public, but so are hearings on matters “affecting a grand jury proceeding.” Such ancillary proceedings often involve matters such as motions to quash grand jury subpoenas, motions requesting immunity from prosecution and motions to compel testimony. Federal courts therefore first must determine whether a particular proceeding is related to or affects a grand jury proceeding. This is done on a fact-specific, case-by-case basis.

Once determined to be ancillary to a grand jury proceeding, a matter is presumed secret. The press, in theory, can overcome the presumption by showing that the need for disclosure outweighs the need for secrecy. But case law indicates that such an argument has a slim chance of succeeding, especially if the grand jury’s investigation is ongoing.

Federal courts have held that the media had no right of access to papers or proceedings involving: a claim by an anonymous grand jury witness that he was the victim of illegal electronic surveillance by the government (*In re Grand Jury Subpoena*); allegations of government misconduct in releasing a sentencing memorandum that allegedly violated the grand jury secrecy rule (*United States v. Smith*); and objections from Monica Lewinsky’s lawyer to a grand jury subpoena and other ancillary matters during the investigation of President Clinton. (*In re Dow Jones & Co., Inc.*) At the state level, a California appeals court last year extended the rule of grand jury secrecy to motions to quash grand jury subpoenas served on an archdiocese in a priest sex abuse case. (*Los Angeles Times v. Superior Court*)

That is not to say the press can get no information at all about grand jury ancillary proceedings. In the *Dow Jones* case, the U.S. Court of Appeals in Washington, D.C., recognized that a local rule of criminal procedure allowed the trial court to open

matters “upon a finding that continued secrecy is not necessary to prevent disclosure of matters occurring before the grand jury.” Pursuant to this “limited means for disclosing non-secret matters,” the court suggested that cases before the grand jury could appear on the public docket under a nondescript caption such as “In re Grand Jury Proceedings,” followed by a “miscellaneous” case number. It sent the case back to the trial court to consider this option.

The trial court subsequently refused to create a generic rule that would require public docketing of all grand jury ancillary proceedings. The case then went to the appeals court a second time. In upholding the lower court’s decision, the appeals court noted that the media may seek a redacted public docket in a specific case. If the trial court denies the request, it must give a reason for doing so beyond the fact that it burdens administrators. The court also cannot deny the request based simply on the fear of leaks. The appeals court agreed with the media that the local rule “means what it says in providing a limited right to access with respect to grand jury ancillary proceedings.” (*In re Sealed Case, No. 99-3024*)

So what does all this mean to journalists seeking access? There is no First Amendment right of access to grand jury proceedings. The longstanding rule of secrecy covers participants, documents, and other materials, as well as matters that are related to grand jury proceedings. It may even apply to witnesses to some extent.

Unless the law specifically permits disclosure, the presumption of secrecy most likely will trump the interest in openness. As one federal district judge noted, in a recent case questioning the government’s authority to hide investigations from the public: “[T]he government has at least some power to control information which is its ‘own creation,’ and to which there is otherwise ‘no First Amendment right of access.’” (*Doe v. Ashcroft*)

#### Cases cited in this article:

*Butterworth v. Smith*, 494 U.S. 624 (1990)

*Doe v. Ashcroft*, 334 F. Supp. 2d 471 (S.D.N.Y. 2004)

*Hoffmann-Pugh v. Keenan*, 338 F.3d 1136 (10th Cir. 2003)

*In re Dow Jones & Co., Inc.*, 142 F.3d 496 (D.C. Cir. 1998)

*In re Grand Jury Subpoena (John Doe No. 4 v. John Doe No. 1)*, 103 F.3d 234 (2d Cir. 1996)

*In re Newark Morning Ledger Co.*, 260 F.3d 217 (3d Cir. 2001)

*In re Sealed Case No. 99-3024*, 199 F.3d 522 (D.C. Cir. 2000)

*In re Sealed Case No. 99-3091 (Office of Independent Counsel Contempt Proceeding)*, 192 F.3d 995 (D.C. Cir. 1999)

*Los Angeles Times v. Superior Court*, 7 Cal. Rptr. 3d 524 (Cal. Ct. App. 2003)

*McClatchy Newspapers v. Superior Court*, 751 P.2d 1329 (Cal. 1988)

*San Jose Mercury News, Inc., v. Criminal Grand Jury of Santa Clara County*, 19 Cal. Rptr. 3d (Cal. Ct. App. 2004)

*United States v. Aisenberg*, 358 F.3d 1327 (11th Cir. 2004)

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**Subject:** Fwd: John Paul Bennett Merced County Grand Jury Citizens Complaint Form April 3, 2011  
**From:** Gene Forte <geneforte@badgerflats.com>  
**Date:** Fri, 08 Apr 2011 13:55:29 -0700  
**To:** grandjury@co.merced.ca.us, Grand Juror Tomsha <ambs\_2@yahoo.com>  
**BCC:**

April 8th, 2011

Grand Juror Foreperson Ellington & Grand Juror Tomsha and Other Grand Jury members,

You will find below the email I received today from Mr. Bob Oliver of "The Quantum Leap" with his attachments which were delivered to him for me from a Mr. John Bennett. I vaguely recall Bennett making contact with me sometime in 2002 or 2003 as a caller to my radio program on KSCO in Santa Cruz at the time.

I have never met Mr. Bennett nor heard from him since such time.

It is readily obvious that Bennett did not intend to file a Merced County Grand Jury Complaint against me.

I regret any confusion that Bennett's contact may have caused. He is a homeless person. I suggest that a great deal of passion and understanding be granted him for his actions. I will also say that just because he is homeless, it does not mean that he does not have his story to tell about what I know to be a very despicable group of public officials in Monterey County. I only suggest that his allegations should be taken with an added grain of salt.

I have no knowledge as to what the "29 documents" he has forwarded to you for me are. I also think it appropriate under the circumstances that the Grand Jury provide me the documents clearly delivered to me by Mr. Bennett

With that said, I redirect my attention to the fact that Merced County Counsel James Fincher ( a subject of the complaint under investigation) has no excuse for his actions. Fincher knowingly obstructed a Grand Jury investigation of himself and other subjects of the complaint.

Fincher knowingly did so under the guise of being an "advisor to the Grand Jury," when he knew he legally could not be, by running like chicken little crying the sky was falling by proffering an illegal and wholly inaccurate legal opinion to the Grand Jury.

Fincher is not homeless and presumably of sound mind and body.

I am in the hopes that this is my last email on the subject. I simply felt it imperative to transmit to you the email received from Mr. Oliver.

I will await to hear confirmation from you that the investigation has been put back on track and my interviews scheduled.

Again, thank you for your continued patience and have a pleasant weekend.

Gene Forte

PS: I have left intact the email from Mr. Oliver for your information. I also add that he, like any other citizen easily recognizes that even if there were some "confidentiality agreement" between myself and the Grand Jury, how in the world could it exist if we never even met. Oliver is not an attorney.....Fincher is.

I intend to bring such glaring point to the attention of the California State Bar.

----- Original Message -----

**Subject:** John Paul Bennett Merced County Grand Jury Citizens Complaint Form April 3, 2011  
**Date:** Fri, 8 Apr 2011 12:56:15 -0700  
**From:** bob oliver <[boboliver9@gmail.com](mailto:boboliver9@gmail.com)>  
**To:** [geneforte@badgerflats.com](mailto:geneforte@badgerflats.com)

Gene,

I found these two page documents on the seat of my motorcycle on or about April fourth at the KRXA540 radio station. The documents to the Grand Jury of Merced are apparently from John Bennett. John is a local homeless person who has been very knowledgeable about the corruption in Monterey County. He has made many claims to me about things he knows or suspects about our government and about our local politics. Most I have not verified.

He has made claims about the local corruption and the way the DA's office and Dean Flippo are all part of a Good Ol Boys Network.

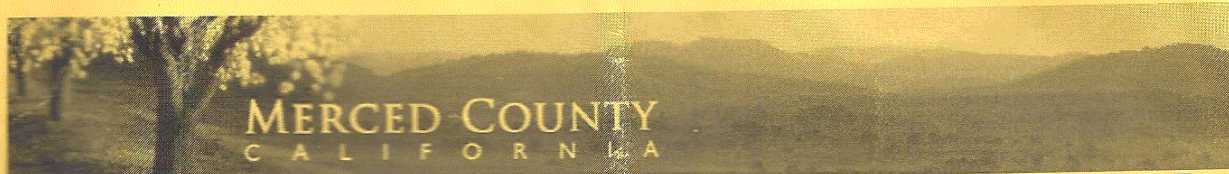
I have never talked with him about you and your problems. Apparently he listened to the show we did on April 2, 2011 (last Saturday). I have not seen or talked with John for over a month, but I will try to reach him. The phone number on his Grand Jury form is the one I also have for him.

I understand from our conversation of today that you have no confidentiality agreement with the Merced Grand Jury, and that they have given you several meeting dates in the past - ALL OF WHICH THEY HAVE CANCELED AT THE LAST MOMENT. How could you have a confidentiality agreement with them if you have never met with them.

Get Um Badger!

Bob Oliver 831 383-2676 [boboliver9@gmail.com](mailto:boboliver9@gmail.com) The Quantum Leap Mondays 8pm, Saturdays 9-11pm on [www.krxa540.com](http://www.krxa540.com)

— Forte 1.jpg —



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### Contact the Grand Jury

#### Contact Us

Any matters referred to the Civil Grand Jury for possible investigation must be submitted in writing with supporting background information and documents. If documents are available, but too voluminous to mail, indicate that in correspondence.

Correspondence should be directed to:

Grand Jury Foreperson  
P.O. Box 2034  
Merced, CA 95344  
Ph: (209) 777-2516

#### Serving on the Merced County Civil Grand Jury

Interested citizens who wish to serve on the Merced County Civil Grand Jury should direct correspondence to:

Kathleen Goetsch  
Court Executive Officer  
670 West 22nd St.  
Merced, CA 95340

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NOTIFY me

**MERCED COUNTY**  
2222 M STREET  
MERCED, CA 95344  
PH. (209) 385-7434  
TOLL FREE (800) 226-6452

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TO: BOB OLIVER

PHONE CALL SUNDAY TO  
CONFIRM FAX # TO GENE FORTE  
DIDN'T WORK (209) 894  
5040  
DENTED  
GENE LIVED THEIR.

MERCED COUNTY GRAND JURY  
CITIZENS COMPLAINT FORM

PO Box 2034  
Merced, CA 95344-2034

(Please print type or print clearly)

The Civil Grand Jury of Merced County, in an attempt to carry out its duties, encourages Merced County residents to report concerns related to local and county government and the conduct of Merced County public officials.

We recognize that many citizens are reluctant to put details of their concerns in writing. Your name will never be used by the Grand Jury. All Civil Grand Jury members are bound by an oath of secrecy. Civil Grand Jury documents, including this complaint form, are never available to anyone outside the Civil Grand Jury and cannot be subpoenaed.

Date: APRIL 3, 2011

No.: \_\_\_\_\_  
(Office Use Only)

COMPLAINANT

Name: JOAN PAUL BENNETT

Address: P.O. BOX 2051 City & Zip: SEASIDE 93955

Tel: SAME → Tel: (831) 235-3129 (NOON-6PM)  
(Home) (Work or Cell)

SUBJECT OF COMPLAINT (PERSON OR AGENCY)

Name/Title/Agency: EUGENE FORTE

Address: 688 BIRCH COURT City & Zip: LOS BANOS 93635

Tel: (209) 894-5040 Department: GRAND JURY WITNESS  
(209) 829-1952

COMPLAINT

Be specific; include names and dates. Describe the problem in your own words. Use additional pages if necessary.

MR. EUGENE FORTE ANNOUNCED SATURDAY (APRIL 2, 2011) KXRA 540 AM  
(SAND CITY, CALIF.) OF HIS APPEARANCE BEFORE THE  
"MERCED COUNTY GRAND JURY" ON (APRIL 7, 2011)  
CONCERNING THE MONTEREY COUNTY (D.A.) DEAN RILPO  
I WAS UNABLE TO CONFIRM (209) 829-1952 AS BEING  
FORTE FAX#. THEIR FORE I'm MAILING THESE PAPERS  
TO THE (M.C.J.S.) FOR MR. EUGENE FORTE ATTN. AT  
P.O. BOX 2034 29 DOCUMENT ENROUTE TO YOU.

Certification: I certify (or declare) under penalty of perjury that the foregoing is true and correct.

APRIL 3, 2011

Date

Signature

*Joan Paul Bennett*

**Subject:** Federal Rules of Criminal Procedure, Rule 6. The Grand Jury  
**From:** Gene Forte <geneforte@badgerflats.com>  
**Date:** Fri, 08 Apr 2011 18:30:41 -0700  
**To:** grandjury@co.merced.ca.us, Grand Juror Tomsha <ambs\_2@yahoo.com>  
**CC:** eileenforte@badgerflats.com  
**BCC:**

April 8th, 2011

re: Obstruction of Justice by James Fincher, etc.

Dear The Merced County Grand Jurors, Grand Juror Ellington & Grand Juror Tomsha,

I was hoping to hear from the Grand Jury prior to the weekend, even in a minor way, to assuage my mind that the Grand Jury is addressing the deliberate obstruction and tampering with the investigation by a subject of the investigation James Fincher acting in violation of [Penal Code 934-936](#) as an adviser.

The Grand Jury is aware that there had been no contact with me since May 2010 when I originally filed the complaint that the investigation was initiated upon albeit for one boilerplate letter stating that you had received my complaint.

Then, after informing me that the Grand Jury commenced an investigation, canceling three tentatively scheduled interviews and then striking me with an illicit lightning bolt forged by the subject of the investigation, Merced County Counsel James Fincher, you go completely silent.

Doesn't the Grand Jury have any compassion for what myself and family have been enduring? I would hope so, but the silence is deafening..and speaks volumes as to a potential lack of compassion.

So be it. They do say that justice is blind so that the law is applied to all equally.

I intend to have the Grand Jury keep such in mind now that it is time to hold James Fincher accountable for illegal actions which are above and beyond those he was already under investigation for.

I have done as much as could reasonably be expected to circumvent the Grand Jury from sending out an improper notice of termination of the investigation based upon the advice it received from James Fincher.

It should not need to be said, but due to the illegal actions of James Fincher, the Grand Jury is respectfully reminded that it should not be discussing any of this matter with James Fincher. An independent counsel should have already been assigned. That is what the rule was made for ([PC 934-938.5](#)).

It is so the illegal actions by those that are subjects of the investigation cannot undermine the credibility of the Grand Jury.

Frankly, Grand Jurors, one and all, should be madder than a bunch of proverbial wet hens at James Fincher for putting you in such an incredibly embarrassing position by undermining your credibility....and bringing into question your required neutrality.

With that said, you will find below from the **Cornell University Law School: Federal Rules of Criminal Procedure (2010) Rule 6. The Grand Jury.** I had inadvertently provided you a reference to Rule 6 of the State of Idaho (which actually is still in line with the Federal Rules.

I am pleading to your good conscience as a citizen and as Americans to not let this investigation be obstructed.

Thank you.

Respectfully submitted,

Gene Forte

Federal Rules of Criminal Procedure (2010)

[Rule 6. The Grand Jury](#)

(2) Secrecy.

**(A) No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B) (as follows).**

(B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

- (i) a grand juror;
- (ii) an interpreter;
- (iii) a court reporter;
- (iv) an operator of a recording device;
- (v) a person who transcribes recorded testimony;
- (vi) an attorney for the government; or
- (vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

**NOTE: None of the above describes me, the complainant.---- Gene Forte**

# Badger Flats Gazette

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April 15<sup>h</sup>, 2011

Merced County Grand Jury  
Grand Jury Foreperson Ellington & Grand Jurors  
P.O. Box 2034  
Merced, California 95340

CERTIFIED MAIL  
7011 0110 0002 1934 6266

Re: Dispelling the Myth/Intimidation by Suspects under Investigation

Dear Grand Jury Foreperson Ellington and Honorable Grand Jurors Regina Chavez, Michelle Allison, John Jesus, Jessica Grimaldo, I-Lung Annie Hsu, Jennifer Jones, Elizabeth Avila, Jean Corp, Christiane Traub, Nicole Madril, Douglas Widner, Ruben Violante, Sr., Deborah Giannone, Babs Ratzlaff, William Watts, Daniel Gaines, Kathy Bishop and Annette Tomsha:

I have not had any response to my pleas for communication. I have been rhetorically asking myself what would cause the Grand Jury to vote for an investigation then reverse itself based upon the advice of a subject of the investigation under the guise of saying that I had breached a confidentiality that does not exist.

It is ludicrous to proffer that a package of information sent to you by a homeless person, Mr. John Bennett, requesting that it be delivered to me which was attached to what was *not really* a "Grand Jury complaint form" is what triggered the termination of the investigation of my complaint at the advice of James Fincher.

Bennett apparently in trying to get the information to me also faxed it over to DA Larry Morse and the executive officer of the Merced Superior Court. *It is clear from Bennett's scribbling that his complaints concern Monterey County officials, not me, or Merced County officials.* Therefore, you have two attorneys (Morse & Fincher) that are subjects under investigation, and an intelligent officer of the court presenting it to Judge Brian McCabe, who all knew that it had nothing to do with me, but all to do with a poor homeless person trying to get information to me.

In conscious disregard of such fact they yelled "FIRE" in a crowded room of Grand Jurors to terminate the investigation against themselves. Do you really think the public is going to believe that all of you are so inept not to see what they did? Or do you think the public is going to think you backed down from your obligation to protect citizens and joined in with those under investigation?

Do any of you really think I am not going to make this known to the public?

With that said, let me tell you further what I think has happened, and dispel a myth, especially when it comes to me. I am not a litigious crazy person filing frivolous lawsuits. Such fact had been determined by the court twice. The court determined such in 2005 and again in March 2011. Keep that in mind as you read on.

The subjects of the investigation have been tampering with the investigation by intimating through members of the Grand Jury, possibility the Foreperson Ms. Ellington, that you could be sued by the subjects under investigation for slander and liable. The basis for my thinking so is from conversations that I have had with the president of the California Grand Jurors Association (which Merced County is not a part of), previous Grand Jurors and Forepersons, and numerous articles about Grand Juries such as the one of Modoc County that I have researched.

It is not some grand conspiracy plot hatched in my mind.

It is a well known ploy used by public officials under investigation whose heads are on the proverbial chopping block with no plausible defense. It is also the most heinous and deplorable act that you as Grand Jurors can be submitted to, and also that you can allow to be done to you. When you buckle to such, you have broken your oath to the public to be a watch dog over the government. Instead you become the whipped dog on their leash to further their crimes. You defile everything that American ideals are supposed to be.

For the past ten years, I have made sacrifices that many Americans would never make to fight for justice and fairness. Quite often, I have been told by citizens that there should be more people like me. I agree. I am not a radical trying to overthrow the government. I'm a citizen that is fighting the good fight for American ideals that have been marginalized because ideals do come with a price.

*It should also be made clear that I have never, ever been sued by the treasonous bastards that are violating their oath to public service.* The reason why I have not been is because they know that I have the solid evidence to nail their tongues to the floor if they so dare bring me into a courtroom. Don't get confused that my now being set for trial means they did that on purpose. *It was a very stupid mistake by a very vicious person who did not know what danger he would be putting those above him in.*

When Merced County Deputy John Picinich falsely arrested me twice, and battered me, he created a nightmare for all of those that were trying to keep concealed my work and evidence of their crimes. There was a systematic cover-up by Merced County law enforcement agencies. It was orchestrated by individuals from the Attorney General's office for public officials out of Monterey County where several judges have been forced into retirement by me.

Treasurer Bill Lockyer, formerly Attorney General, and Governor Schwarzenegger, in their private capacities, attempted to declare me what is called a California Vexatious Litigant. Retired Judge John Golden who heard the motion referred to it as a "purported motion" made by parties that had no legal standing to file it. Golden further ruled that I had never done anything, even remotely, for which I could be declared a vexatious litigant, i.e., I never filed numerous lawsuits. I never filed slanderous or frivolous documents.

Quite the contrary, though not being an attorney, I have written and won two appeals that outlined in detail that judges in Monterey County were fixing cases with local attorneys. My wife and I defeated the motion brought by the top attorneys of the State of California ourselves. It would be similar to Harry Potter surviving the death hit by Lord Voldemort, or a flea flipping an elephant on its back.

The reason why we were able to do such was because we had the truth and evidence on our side...and a retired judge that would not play along with the game of Bill Lockyer.

Even though I had not been declared a vexatious litigant, when I was at the early stage of hanging another Monterey County Judge Michael Fields' injudicious robe on my wall, The Monterey Herald, then owned by McClatchy Newspapers, reported that I HAD been declared a vexatious litigant in a 2,000 word front page Sunday article.

Three weeks later, they printed a small correction buried in the paper saying that due to an error in court records, they had made a mistake...I hadn't been declared a vexatious litigant. It wasn't a mistake. It was an intentional false fact put out to the public at large to discredit me. I had served notice to the Herald, that I had defeated the motion, months before their article. You do not have to take my word for it. As an offer of proof you will find attached the article in the Monterey Herald, my notice to them and their correction.

Here is the major problem that DA Larry Morse, James Fincher, and the subjects of my complaint have. There is a trial set for June 7<sup>th</sup>, 2011. They have to prove to a jury that I attacked a judge and a deputy. When DA Morse is put on the stand to explain why he filed the charges that he said he could not even investigate, he has no excuse. This is the reason public defenders are being pressured to have me disqualify DA Morse. It would let him off the hook, but keeps me in the pot.

If I did disqualify DA Morse, it would be handed off to another DA friend of Morse to prosecute as DA Morse said in his tape recorded conversation with me. As you know from the police reports that are part of my complaint, the police officers have lied. I have audio recordings proving they lied. I have a taped conversation of DA Morse saying that he knew he could not investigate or files charges against me. I have evidence that Pro-tem Judge James Padron committed perjury. They, the subjects of the complaint, know they are in really big trouble...provided that you do not willingly succumb to their dirty tricks and intimidation.

I assure you that the powers that be are in more fear of you than any other Grand Jury that has ever been assembled in the United States due to me and my evidence.....provided that you do not buckle. That is why they are trying to intimidate you. They are bluffing. If they were to sue you, they know that I would be right there with the evidence to cram down their throats.

I anticipated what their escape route would be. It was for such reason that I said from the start in my complaint that it was going to be "transparent" and a "virtual open book". The purpose of the secrecy of Grand Jury investigation was to be for the protection of the complainant, not for the erstwhile public officials being investigated. It is their twisting and contorting of this purpose that has the tail wagging the dog.

I am attaching to this email as an offer of proof the first page of the vexatious litigant motion brought by Bill Lockyer and Arnold Schwarzenegger and the order indicating that I defeated. I will also tell you that attorney for Mayor Tommy Jones, Ben Ratliff (also named as a subject in my complaint), made a carbon copy of it and filed it before Judge Mayhew. I also defeated it, but Judge Mayhew did not give me the sanctions of \$13,000.00 as he should have in order to keep me under financial duress. Mayhew is as crooked as all the rest in trying to keep hidden what I have on these mutts.

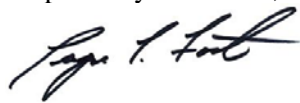
I am not simply going to say let your conscience be your guide in doing the right thing. I am telling you to do what is required of you as Grand Jurors and do not be intimidated by them.

You should not fear a threat of an unfounded lawsuit by them for liable and slander as long as you remember that truth is an affirmative defense. I do have the truth on my side which will crush them. All you need to do is your job.

Even though I hate to put it in these terms, I also have the power to hold any jurors legally and publicly accountable for intentionally usurping their duties by succumbing to jury tampering to participate in covering up for public officials which ultimately damages and maligns me.

If you have any questions, please feel free to call.

Respectfully submitted,



Gene Forte

(See attachments to email with this letter)

**Subject:** Badger Flats Gazette Flash: Grand Jury Tampering by Merced County Counsel James Fincher (Subject of Investigation)  
**From:** Gene Forte <geneforte@badgerflats.com>  
**Date:** Tue, 19 Apr 2011 16:23:54 -0700  
**To:** geneforte@badgerflats.com, grandjury@co.merced.ca.us  
**CC:** maria.laganga@latimes.com  
**BCC:**

**NOTICE:** If you wish to be removed from my email list, please just notify me. As you know, I have not barraged anyone with emails. The last mailing was March 10th, 2011.

But, my alleging that there has been tampering with my Grand Jury Investigation by Merced County Counsel James Fincher, a subject of the investigation, is something I need to tell you about...*and something I believe you would want to know about.*

For the record, of 1,500 attorneys that received my last emails, only 18 asked to be removed. Twelve of those belonged to either the public defender's offices, or other public/state agencies. The other six were probably friends of Ms. Barbara O'Neill or related to subjects under investigation. **(LOL)**

I personally want to thank all of you for being interested in what is taking place.

Also a very special thanks to those of you who have taken the time to respond with kind words of encouragement.

Gene Forte

### **To All Recipients:**

I know you are all very busy attempting to uphold the integrity of the legal system. But, as the public becomes aware that Merced County public officials are brazenly tampering with a Grand Jury Investigation of themselves, with the court knowing about it, and no one respectfully asking the court to do something about it .....

Well, I respectfully submit that your law licenses may eventually garner as much respect and integrity as a copy of McClatchy Newspapers' Merced Sun Star, the Modesto Bee, the Fresno Bee, or the Los Banos Enterprise who are involved in keeping this concealed from the public.

Attorney friends of mine, and I do have many, say that what I am doing is a good thing. Only my corrupt adversaries would disagree.

With that said, here are some links that will provide substantial evidence that Merced County Counsel James Fincher tampered with a Grand Jury Investigation against himself, and other subjects of the complaint who would be his clients.

**Here are the facts:**

- 1. May 20th, 2010:** I filed a Grand Jury complaint against DA Larry Morse, County Counsel James Fincher, etc. alleging that I was being vindictively criminally prosecuted for exposing public official corruption in Merced County in my Badger Flats Gazette. ([See Complaint](#))
- 2. March 7th, 2011:** I sent an email to 1,500 attorneys in Merced County, Fresno County and Stanislaus County with a link to a [letter to Merced County Judge Kiriara](#). The letter alleges that Merced County Defense Associates (MCDA), that is comprised of Thomas Pfeiff, Dave Capron, and Cindy Morse, two witnesses for the prosecution and the wife of DA Morse. is setting me up with the counsel they got me, Ms. Barbara O'Neill, to lose the case. O'Neill set the trial date for June 7th, 2011, then said she was no longer my attorney because I would not agree for her to file a Motion to Disqualify Morse. Albeit, it had long been agreed and decided a Motion to Dismiss would be filed instead.
- 3. March 16th, 2011:** After not hearing a peep from the Grand Jury since the filing of my complaint, I was contacted by Grand Juror Annette Tomsha. Tomsha said they voted to have a formal investigation of my complaint. Tomsha said they wanted me to be interviewed across several meetings. The first meeting was set for March 24th, then canceled and moved to March 31st, then canceled, and moved to April 7th, 2011. ([See email exchange between Grand Juror Tomsha and Forte](#))
- 4. April 7th, 2011:** Grand Juror Tomsha called and told me that Merced County Counsel James Fincher, a subject of the investigation advised the Grand Jury ([violating PC 934-936](#)) that in his legal opinion I had breached my confidentiality owed to the Grand Jury and the investigation should be terminated. A re-vote was done based upon Fincher's legal advice and the investigation against himself and others were terminated. ([See letter to Grand Jury and Grand Juror Tomsha confirming the event](#))

**NOTE:** As of today's date April 19th, 2011 MCDA and O'Neill have not responded to 8 letters sent them (roughly one per week) since March 3rd, 2011. The court records still indicate that O'Neill is my attorney. O'Neill says that she is not my attorney because MCDA says she is not. That of course is ludicrous. [Here is the last email to MCDA of April 18th 2011.](#)

**EPILOGUE:** On April 11th, 2011, I filed a Police Report #11-18328 with the Merced Police Department for Jury Tampering naming Merced County Counsel James Fincher as the suspect, Grand Jurors Annette Tomsha and Grand Jury Foreperson Barbara Ellington as witnesses, and myself as the victim. Let's see what happens!

**Subject:** Jury Tampering by Merced County Counsel James Fincher/Ignorance of the Law is No Excuse

**From:** Gene Forte <geneforte@badgerflats.com>

**Date:** Wed, 20 Apr 2011 12:48:12 -0700

**To:** grandjury@co.merced.ca.us

**CC:** Grand Juror Tomsha <ambs\_2@yahoo.com>, eileenforte@badgerflats.com

April 20th, 2011

Merced County Grand Jury  
Grand Jury Foreperson Ellington, Grand Juror Tomsha & Grand Jurors  
P.O. Box 2034  
Merced, California 95340

re: Certified Mail #7011 0110 0002 1934 6266  
& Jury Tampering by Merced County Counsel James Fincher & Whom Else?

Dear Grand Juror Foreperson Barbara Ellington, Grand Juror Tomsha and Honorable Grand Jurors,

On April 15th, 2010 you were sent by Certified Mail a hard copy of a cover letter dated April 15th, 2011 which was sent to you by email on Thursday evening, April 14th, 2011. You will find it attached.

I have confirmed that it is at your P.O. Box. (See attachment) It did take time to prepare and cost money to mail. I did it as a courtesy for you all. I would certainly appreciate that you pick it up. But, that is up to you.

Regrettably, I have had no response to my written communications. There has been no contact from the Grand Jury since an email from Grand Juror Tomsha on April 11th, 2011.

I would be willing to bet that you, Foreperson Ellington, or some other jurors, have been beating a path to, or burning the lines up to Fincher...haven't you? **That again would be a great big NO-NO!**

At any rate, I felt it necessary for my protection that the illicit activities of James Fincher jury tampering with the investigation of himself.....with apparently Grand Jurors sitting tacitly by ratifying it.....that the public should be made aware of it.

To that end, I sent you an email yesterday, April 19th, 2011, which was also sent to over 2,000 attorneys, public officials and citizens in three counties. That is just for openers. Each day hundreds more will be sent out.

It presents strong evidence of the skull skulduggery by James Fincher with sad to say potentially some Grand Jury members.

Giving the benefit of doubt to some of the jurors that are new who by a far stretch of the imagination did not know what common sense dictates, that there were laws prohibiting Fincher from giving you legal advice on his own investigation, may have relied too heavily on the previous year of experience of you, Foreperson Ellington, had as a Grand Juror.

But that is pretty still hard for me to swallow, or I submit any person off the street.

In the overview to my complaint which the majority of you voted upon to investigate, it stated (bolded, underlined and italicized):

**"OVERVIEW: The presentation of evidence for this complaint, which will be frequently supplemented, is best described as the application of two common adages, "the devil is in the details" and "eating an elephant one bite at a time." The complaint will be "transparent" and a "virtual open book" to the public. The Badger Flats Gazette is encouraging additional evidence and support from citizens who have experienced, the "mysteries" of Public Official Corruption, which are, Officials Commit Crimes, Officials Cover-up Other Officials' Crimes, Newspapers Don't Report About It. Amen!**

**The public will be alerted that Morse, Fincher, the California Attorney General's Office, and a disqualified judge of the Merced Superior Court are also specious advisors to this Grand Jury complaint against themselves. (That's a no-no according to Penal Code §934-936.)"**

Therefore, it was pointed out that I was going to be telling people. There was nothing confidential about it as to me. I would be soliciting information from the public....**AND.....DA LARRY MORSE, JAMES FINCHER & THE ATTORNEY GENERAL'S OFFICE COULD NOT BE ADVISORS TO THE COMPLAINT AGAINST THEMSELVES ACCORDING TO PENAL CODE 934-936.**

Notwithstanding such overt and clear notice to you all...you terminated the investigation based upon the legal advice of James Fincher that I had breached a confidentiality that I did not owe. WOW!!!!!!!

The public is just not going to buy it my Honorable Foreperson Ellington....neither is law enforcement that will ultimately get their own teats in a ringer if they try to make excuses for Fincher and his accomplices.

Remember what they say "Ignorance of the law is no excuse".

With that said, as a courtesy to Grand Juror Tomsha, you will notice that I redacted her personal information such as her place of employment, email and telephone numbers from her email exchange with me.

Thank you.

Respectfully submitted,

Gene Forte

<b>110415 Letter to Grand Jury Certified Mail Copy.pdf</b>	<b>Content-Type:</b> application/pdf <b>Content-Encoding:</b> base64
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**110414 Email to Grand Jury Sent Certified Mail.pdf**

**Content-Type:** application/pdf

**Content-Encoding:** base64

— 110415 Certified Letter Receipt of Letter to Grand Jury.pdf —

**110415 Certified Letter Receipt of Letter to Grand Jury.pdf**

**Content-Type:** application/pdf

**Content-Encoding:** base64