



U.S. Department of Justice


Criminal Division


Washington, D.C. 20530

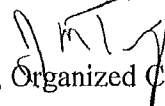
July 8, 2011

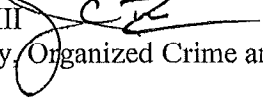
MEMORANDUM

**TO:** Lanny A. Breuer  
Assistant Attorney General

**THROUGH:** Jason M. Weinstein   
Deputy Assistant Attorney General

**FROM:** P. Kevin Carwile   
Chief, Capital Case Unit (former Chief, Gang Unit)

James Trusty   
Acting Chief, Organized Crime and Gang Section

John F. Cox III   
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**SUBJECT:** Review of *Kansas City Star* Allegations Regarding the Prosecution of  
United States v. Sheppard, et al. (The Kansas City Firefighters Case)

Summary

On November 29, 1988, one or more arsonists set fire to a truck and to a construction trailer parked at a highway construction site in Kansas City, Missouri. One fire was set in a small pickup truck belonging to Deborah Riggs, a security guard at the construction site. A second fire engulfed a storage trailer and an adjoining pickup parked hundreds of yards away over the ridge of a large hill. Trial Transcript (“Tr.”) at 445, 469-74, 2259, 3047-48, 3054-55. The storage trailer contained volatile chemicals. As a team of firefighters tried to extinguish the trailer flames, the trailer exploded, killing all six responders.

In 1996, in United States v. Sheppard, et al., five defendants – Darlene Edwards, Richard Brown, Earl “Skip” Sheppard,<sup>1</sup> his brother George “Frank” Sheppard (hereinafter “Frank Sheppard”), and their nephew Bryan Sheppard – were indicted in the United States District Court for the Western District of Missouri on federal arson charges concerning the incident. Tr. 3979-80. Trial began on January 13, 1997. Guilty verdicts for all defendants were returned on February 26, 1997. Each defendant was sentenced to life imprisonment. Tr. 3936, 4064-65.

<sup>1</sup> Earl Sheppard died of cancer July 25, 2009, at a federal correction center in Butner, North Carolina.

Beginning in 2007 and continuing through 2009, the *Kansas City Star* (the “*Star*”) published a series of investigative articles alleging government misconduct in the Sheppard case. Based on interviews conducted by a *Star* reporter, the articles asserted that several government witnesses lied at trial, that government representatives used coercive tactics for the purpose of seeking to fabricate inculpatory evidence or to dissuade witnesses from testifying about exculpatory evidence, and that suppressed and/or newly-discovered evidence indicated that persons other than the convicted defendants carried out the arson.

In July 2008, the United States Attorney for the Western District of Missouri asked the Department of Justice to review the *Star* allegations, so as to avoid any appearance of partiality. The Office of the Deputy Attorney General assigned the Criminal Division to conduct the review.

The Criminal Division’s review of the prosecution focused on whether the allegations raised in the *Star* are supported by evidence. The review was not, and was not intended to be, a re-investigation of the arsons. Rather, the review was intended to address the *Star*’s assertions that the defendants may have legitimate claims of actual innocence.<sup>2</sup> Based on the information obtained during its review, the review team did not find any credible support for the *Star*’s allegations. Specifically, the review team found the following:

1. Alleged False Trial Testimony. The *Star* identified five trial witnesses who allegedly admitted giving false trial testimony due to coercion by the government. Two of those witnesses agreed to speak to the review team. Both stated that their trial testimony was truthful.
2. Alleged Undue Pressure or Coercion. The *Star* identified numerous individuals who did not testify at trial, but who contended that the government engaged in coercive tactics to persuade them to inculcate the defendants or to dissuade them from exculpating the defendants. The review team interviewed each of the individuals it could locate and who would consent to an interview, as well as numerous law enforcement officers involved in the case. The review team has concluded that the government did not engage in conduct intended to improperly coerce those individuals to inculcate the defendants or to dissuade them from exculpating the defendants, and that the individuals either possessed no relevant information or, in those instances in which they did, the Sheppard defense team had the information prior to trial.

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<sup>2</sup> See Bousley v. United States, 523 U.S. 614, 623 (1998) (“‘actual innocence’ means factual innocence, not mere legal insufficiency.”). A defendant bears the burden of establishing “actual innocence” on collateral review -- the government can rebut the defendant’s showing “by presenting any admissible evidence” of guilt, even if it was not used in the criminal trial or plea proceeding. Id. at 623-24.

3. Allegedly Withheld Exculpatory Information. The *Star* asserted that the government suppressed exculpatory evidence provided by four individuals. The review team has concluded that the information from one of these individuals was disclosed in discovery, while information from the other three appears not to have been included among the voluminous amounts of potentially exculpatory material produced by the government in this case. The review team has concluded that the information that appears not to have been previously provided would not have called into question the defendants' guilt of the crimes charged.
  
4. Allegations Regarding Information  
The *Star* asserted that it had uncovered evidence \_\_\_\_\_ in the arson. The review team found that the government disclosed substantial potentially exculpatory information prior to trial, including information suggesting that \_\_\_\_\_ others may have been involved in the arson, and that several of the witnesses identified by the *Star* either testified at trial or were otherwise known to the defense prior to trial. Moreover, the review team has concluded that the information provided by these witnesses would not have called into question the defendants' guilt of the crimes charged.
  
5. Newly-Discovered Information. The review team identified several newly-developed pieces of information, not previously known to the prosecution, that suggests that \_\_\_\_\_ may have been involved in the arsons in addition to – and not to the exclusion of – the defendants. The review team has concluded that this newly-developed information would not have called into question the defendants' guilt of the crimes charged.